

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-1034**

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PROD-X DISTRIBUTORS, INCORPORATED; NASIR M.  
KHAN, a/k/a David Khan,

Plaintiffs - Appellants,

versus

CAPITOL RESOURCE FUNDING, INCORPORATED,

Defendant - Appellee.

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Appeal from the United States District Court for the Eastern  
District of Virginia, at Alexandria. T. S. Ellis, III, District  
Judge. (CA-03-1065-1)

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Submitted: September 1, 2004

Decided: October 20, 2004

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Before WILKINS, Chief Judge, WILLIAMS, Circuit Judge, and Glen E.  
CONRAD, United States District Judge for the Western District of  
Virginia, sitting by designation.

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Affirmed in part and stayed in part by unpublished per curiam  
opinion.

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Scott M. Behren, Shawn L. Michaelson, WALDMAN, FELUREN, HILDEBRANDT  
& TRIGOBOFF, P.A., Weston, Florida, for Appellants. Stephen M.  
Seeger, Julie Quagliano, QUAGLIANO & SEEGER, Washington, D.C., for  
Appellee.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Plaintiffs Prod-X Distributors, Inc. ("Prod-X") and Nasir M. Khan appeal from the district court's order dismissing their breach of contract claim and entering judgment in favor of Defendant Capitol Resource Funding, Inc. on its counterclaim for breach of contract. With respect to the district court's dismissal of Plaintiffs' breach of contract claim and the district court's judgment in favor of Defendant on its counterclaims against Khan, we have reviewed the record and find no reversible error.\* Accordingly, we affirm on the reasoning of the district court. See Prod-X Distribs., Inc. v. Capitol Res. Funding, Inc., No. CA-03-1065-1 (E.D. Va. filed Nov. 26, 2003 & entered Dec. 4, 2003). However, because Prod-X has filed a bankruptcy petition, we stay the appeal of the district court's judgment in favor of Defendant on its counterclaim against Prod-X. See 11 U.S.C. § 362(a) (2000). We deny Plaintiffs' motion for attorney's fees and Khan's emergency motion to stay enforcement of the contract and to stay the bankruptcy proceeding. We deny Defendant's motion to dismiss but grant Defendant's motion to submit the case on briefs. We dispense with oral argument because the facts and legal contentions are

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\*Because Plaintiffs' breach of paragraph three of the repayment agreement was a material breach of the contract that excused Defendant's performance under the contract, we need not consider the alternative grounds provided by the district court for excusing Defendant's performance.

adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART AND STAYED IN PART