

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1846

TMS ENVIROCON, INCORPORATED,

Plaintiff - Appellant,

v.

BB&T INSURANCE SERVICES, INCORPORATED, d/b/a DeJarnett &
Paul,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern
District of Virginia, at Norfolk. Raymond A. Jackson, District
Judge. (2:09-cv-00598-RAJ-DEM)

Submitted: April 28, 2011

Decided: May 25, 2011

Before NIEMEYER, KING, and DUNCAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

John S. Wilson, WILSON & MCINTYRE, PLLC, Norfolk, Virginia, for
Appellant. W.F. Drewry Gallalee, Harold E. Johnson, WILLIAMS
MULLEN, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

TMS Envirocon, Inc., appeals the district court's order granting summary judgment to BB&T Insurance Services, Inc., on TMS' breach of contract claim. TMS claimed that because BB&T Insurance Services failed to timely report a TMS claim to its insurer, as it was contractually obligated to do, TMS lost insurance coverage for the claim.

"Because we have diversity jurisdiction in this case, we apply the choice of law rules of the forum state – in this case Virginia." CACI Int'l, Inc. v. St. Paul Fire & Marine Ins. Co., 566 F.3d 150, 154, 155 (4th Cir. 2009). In Virginia "[t]he elements of a breach of contract action are (1) a legally enforceable obligation of a defendant to a plaintiff; (2) the defendant's violation or breach of that obligation; and (3) injury or damage to the plaintiff caused by the breach of obligation." Filak v. George, 594 S.E.2d 610, 614 (Va. 2004) (citations omitted).

After carefully reviewing the record, we conclude that the district court did not err in holding that TMS failed to prove causation because the insurer denied coverage of the claim also on the alternative ground that the policy did not provide coverage for the claim. Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are

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

AFFIRMED