

Bond Case Briefs

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EMINENT DOMAIN - NORTH CAROLINA

Department of Transportation v. Hutchinsons, LLC

Court of Appeals of North Carolina - May 7, 2019 - S.E.2d - 2019 WL 1996397

Department of Transportation (DOT) brought condemnation action for widening of highway. Landowner brought motions to amend its pleading, for a Section 108 hearing, and for a continuance.

The Superior Court orally dismissed the Section 108 motion, and denied the other two motions in written orders. Landowner filed a notice of appeal and a motion to stay further proceedings. After denying the motion to stay, the Superior Court entered written order dismissing landowner's motion for a Section 108 hearing. One week later, the Superior Court entered final judgment for DOT. Landowner filed a second notice of appeal.

The Court of Appeals held that:

- Trial court had authority to rule on landowner's Section 108 motion that was entered after landowner had filed notice of appeal;
- Trial court reasonably concluded that its order dismissing landowner's Section 108 motion was not appealable;
- Landowner had right to have any pending inverse condemnation counterclaim be tried in condemnation action;
- Trial court had authority to rule on landowner's motion for Section 108 hearing that did not provide ten days' notice;
- Error by trial court dismissing landowner's Section 108 motion based on untimely notice was not prejudicial; and
- Trial court did not abuse its discretion by refusing to grant landowner's motion for continuance.