

# **Bond Case Briefs**

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## **EMINENT DOMAIN - NORTH CAROLINA**

### **In re NCVAMD, Inc.**

**United States Bankruptcy Court, E.D. North Carolina., Raleigh Division - December 31, 2013 - Slip Copy - 2013 WL 6860816**

On April 19, 2010, NCVAMD, Inc., filed a petition under chapter 7 of the Bankruptcy Code and Gregory B. Crampton was appointed as chapter 7 trustee on April 20, 2010. At the time of filing bankruptcy, the debtor owned a 25% remainder interest in a .59 acre tract of land, with all improvements thereon, located off of Roberta Road in Concord, North Carolina ( the "Property").

After the filing of the petition, the trustee and representatives of the NCDOT engaged in discussions regarding the possibility of the NCDOT purchasing the Property in its entirety, including the interest owned by the bankruptcy estate. The two sides could not reach an agreement on the fair market value of the Property. However, as a result of these negotiations the NCDOT gained express and actual knowledge of the bankruptcy filing and the trustee's appointment. Despite this actual knowledge, the NCDOT filed a Complaint and Notice of Taking in the Superior Court seeking to condemn a portion of the Property. The NCDOT then demolished a 1,138 square foot commercial building on the Property as part of the condemnation project. The filing of the Condemnation Action, the recordation of the Memorandum of Action, and destruction of the building all took place after the NCDOT had actual knowledge of debtor's bankruptcy case, and most importantly, before any attempt by the NCDOT to obtain stay relief.

On September 24, 2013, almost one year after filing the Condemnation Action, the NCDOT filed a motion for relief from the automatic stay under 11 U.S.C. § 362. The motion expressly disclaimed any knowledge of the bankruptcy prior to filing the Condemnation Action, despite the fact that the chapter 7 trustee is named as a party defendant in the Condemnation Action complaint. Email communications between the NCDOT and the trustee, dated in May of 2012, undisputedly show that the NCDOT clearly had actual and specific knowledge of the bankruptcy prior to filing the Condemnation Action.

The Bankruptcy Court was not amused, awarding the trustee attorneys' fees, actual damages, and punitive damages.