STATE OF MICHIGAN

COURT OF APPEALS

CITY OF CHARLOTTE,

Plaintiff-Appellee,

v

KARL J. FORELL, JENNIFER L. FORELL, ROSE LYNN SCHLUSSEL,

Defendants-Appellants,

and

ROBERT M. BOHLEN PROFIT SHARING TRUST and FARM CREDIT SERVICES OF MICHIGAN'S HEARTLAND, PCA,

Defendants.

UNPUBLISHED

No. 187775
Eaton Circuit Court
LC No. 94-000162

Before: Fitzgerald, P.J., and MacKenzie and A.P. Hathaway*, JJ.

MacKENZIE, J. (dissenting in part).

I agree with the majority that the trial court did not err in refusing to give defendants' proposed non-standard jury instruction. However, I respectfully dissent from that portion of the majority opinion holding that a new trial is required because the City attorney's closing argument denied defendants a fair trial.

An attorney's comments usually will not be grounds for reversal unless they indicate a deliberate course of conduct aimed at preventing a fair and impartial trial. *Wilson v General Motors Corp*, 183 Mich App 21, 26; 454 NW2d 405 (1990). Thus, in a personal injury action a corporate defendant is denied a fair trial where the plaintiff's summation "constantly stress[ed] the corporate nature, wealth,

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* Circuit judge, sitting on the Court of Appeals by assignment.

power, and insensitivity" of the defendant, especially where this theme is constantly repeated throughout the summation. *Reetz v Kinsman Marine Transit Co*, 416 Mich 97, 110-111; 330 NW2d 638 (1982). In a condemnation case, the government attorney denies the landowner of a fair trial if he "exploit[s] his position as representative of the taxpayers, including the jurors, to the detriment of the landowner." *Wayne Co Rd Comm'rs v GLS LeasCo*, 394 Mich 126, 135; 229 NW2d 797 (1975).

On the other hand, this Court has refused to grant a new trial where the allegedly improper comments were "brief and isolated," *King v Taylor Chrysler-Plymouth, Inc*, 184 Mich App 204, 217; 457 NW2d 42 (1990), and where counsel's behavior "did not compare with the egregious conduct" of the attorneys in *Reetz, supra* and *GLS LeasCo, supra*. *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 16; 527 NW2d 13 (1994).

In the present case, it was defense counsel who first used the term "bankruptcy," and it was obvious that the City attorney's statement responded to counsel's use of that term. Furthermore, the allegedly improper comment was brief and isolated and does not compare with the egregious conduct of the attorneys in *Reetz* and *GLS LeasCo, supra*. There was no need for the trial judge to strike the comment because it was so brief and counsel did not "constantly stress" the issue of bankruptcy as required by *Reetz, supra*.

Reversal on the basis of an attorney's comments is required only where the statements reflect a studied purpose to inflame or prejudice the jury or deflect the jury's attention from the issues involved. *Hunt v Freeman*, 217 Mich App 92, 95; 550 NW2d 817 (1996). In my opinion, the City attorney's statement fell short of requiring reversal under this standard. I would hold that the trial court did not abuse its discretion in denying defendants' motion for new trial and, accordingly, would affirm.

/s/ Barbara B. MacKenzie