

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UNPUBLISHED

June 13, 1997

No. 187775

Eaton Circuit Court

LC No. 94-000162-CC

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

PER CURIAM.

Defendants in this condemnation case appeal as of right from a jury verdict and judgment awarding them \$78,750 as compensation for property which the City condemned pursuant to the Uniform Condemnation Procedures Act, MCL 213.51 *et seq.*; MSA 8.265(1) *et seq.* We affirm in part, reverse in part, and remand.

On appeal, defendants first argue that they were denied a fair trial when the City's attorney appealed to the jury as taxpayers by arguing in summation that the City might be bankrupted if the jury agreed with defendants that just compensation for their property was \$870,000. We agree.

In Wayne Co Rd Comm'rs v GLS LeaseCo, 394 Mich 126, 135; 229 NW2d 797 (1975), the Supreme Court held that in a condemnation case, the government attorney denies the landowner of

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

a fair trial if he “exploit[s] his position as representative of the taxpayers, including the jurors, to the detriment of the landowner.” Here, the Charlotte city attorney argued:

And now this debate, this argument gets really serious, really serious. [Defendants’ attorney] just mentioned it. The city has to pay its bill. It’s going to have to pay the bill that you submit. I don’t know why he threw in the word bankruptcy. Does he want the city to go bankrupt? He knows it –

At that point, defendants’ attorney objected, and the city attorney did not further mention bankruptcy. The trial court did not, however, strike the comment or issue a limiting instruction.

Contrary to the City’s argument, the city attorney’s comment regarding bankruptcy cannot be considered an appropriate response to defense counsel’s argument. Although the city attorney obviously responded to defense counsel’s use of the term “bankruptcy,” (“I don’t know why he threw in the word bankruptcy”), the city attorney did not use the term in that context. Rather, the city attorney’s comment raised the suggestion that a verdict in favor of the City would cause the City to go bankrupt. This is clearly improper. The city attorney’s comment was deliberately injected into the proceedings and was sufficiently egregious to have denied defendants a fair trial.

Defendants also argue that the trial court erred when it refused to give defendants’ proposed non-standard jury instruction. We disagree. Jury instructions are considered in their entirety and should not be extracted piecemeal. *Niemi v Upper Peninsula Orthopedic Associates, Ltd*, 173 Mich App 326, 328; 433 NW2d 363 (1988). When the standard jury instructions do not properly cover an area, a trial court is required to give requested supplemental instructions if they properly inform the jury of the applicable law. However, the determination of whether supplemental instructions are applicable and accurate is within the trial court’s discretion. *Koester v Novi*, 213 Mich App 653, 664; 540 NW2d 765 (1995). A supplemental instruction need not be given if it would add nothing to an otherwise balanced and fair jury charge and would not enhance the ability of the jury to decide the case intelligently, fairly, and impartially. *Mull v Equitable Life Assurance Society of the United States*, 196 Mich App 411, 422-423; 493 NW2d 447 (1992), *aff’d* 444 Mich 508; 510 NW2d 184 (1994).

In the present case, the trial court found that the proposed instruction was not “particularly helpful to the jury,” and that defendants were not prejudiced by its exclusion. We agree. After reviewing the jury instructions as a whole, we conclude that the trial court thoroughly, adequately, and fairly instructed the jury with regard to the parties’ theories and the applicable law. Therefore, the trial court’s decision regarding the jury instructions was not an abuse of discretion. See *Williams v Coleman*, 194 Mich App 606, 623; 488 NW2d 464 (1992).

Affirmed in part, reversed in part, and remanded for a new trial.

/s/ E. Thomas Fitzgerald
/s/ Amy Patricia Hathaway