

CAUSE NO. DC-13-13354

RENATE NIXDORF GmbH & CO. KG,
and WATERCREST PARTNERS, L.P.

Plaintiffs,

v.

TRA MIDLAND PROPERTIES, LLC, et al.

Defendants.

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IN THE DISTRICT COURT

191ST JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

Consolidated with Cause No. DC-17-06190

RENATE NIXDORF GmbH & CO. KG,
and WATERCREST PARTNERS, L.P.

Plaintiffs,

v.

TRA MIDLAND PROPERTIES, LLC, et al.

Defendants.

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IN THE DISTRICT COURT

191ST JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**ORDER GRANTING PLAINTIFFS' MOTION FOR NEW TRIAL
BASED ON INCURABLE JURY ARGUMENT**

Before the Court is *Plaintiffs' Motion for New Trial Based on Incurable Jury Argument* ("Motion"). Having considered the Motion; the Response filed by Defendants Pillar Income Asset Management, Inc., Transcontinental Realty Investors, Inc., American Realty Investors, Inc., Winter Sun Management, Inc., H198, LLC, Triad Realty Services, Ltd., Regis Realty Prime, LLC, Chickory I, L.P., Longfellow Arms Apartments, Ltd., and Vistas of Vance Jackson, Ltd. (collectively, the "Shamoun Defendants"), all of which were represented at trial by C. Gregory

Shamoun¹; the evidence adduced in support of the Motion and Response; the Court's observation of the proceeding in the trial of this matter; the pleadings on file; the arguments of counsel; and all other matters properly before the Court, the Court finds as follows:

1. Messrs. Shamoun and Khoury engaged in improper and incurable jury argument.

Throughout the trial, Messrs. Shamoun and Khoury engaged in unsupported, extreme, and personal attacks on the integrity of Plaintiffs' lead counsel, Mr. Todd J. Harlow. The attacks on Mr. Harlow included denigrating Mr. Harlow by repeatedly referring to him as "Harlow," insulting him as a "silver-tongued lawyer," and repeatedly accusing Mr. Harlow of dishonesty, *despite being admonished repeatedly by the Court - both on and off the record*

Messrs. Shamoun and Khoury also engaged in unsupported, extreme, and personal attacks on Plaintiffs' expert witness, Dr. H. Stephen Grace, and repeatedly badgered Dr. Grace. Those attacks included Mr. Khoury accusing Dr. Grace of being "bought and paid for," and of being willing to "say anything" if he were paid enough money.

Both Mr. Khoury and Mr. Shamoun engaged in further improper jury argument by repeatedly badgering Plaintiffs' corporate representatives. Mr. Khoury also made unsupported, extreme, and personal attacks on Plaintiff Watercrest Partners, L.P.'s corporate representative, Mr. Warren Harmel, by accusing Mr. Harmel of bringing Watercrest's claims "in bad faith."

Messrs. Khoury and Shamoun further engaged in improper and incurable argument by referencing matters outside the record during closing arguments. Mr. Shamoun referenced his own charitable work building schools in Africa, and Mr. Khoury read the jury critical deposition testimony of Daniel Moos that had not been admitted at trial to accuse Mr. Harlow of dishonestly attempting to "fool" the jury into making adverse findings against Transcontinental Realty

¹ Defendants TRA Midland Properties, LLC, TRA Apt West Texas, L.P., and Midland Residential Investments, LLC (collectively, the "Khoury Defendants"), all of which were represented at trial by Stephen A. Khoury, did not file a response to the Motion and did not argue in opposition to the relief requested therein at the hearing of the Motion.

Investors, Inc. Mr. Khoury compounded this misconduct by “disagree[ing]” that the testimony had not been introduced during trial after Mr. Harlow noted that the testimony had not been admitted in evidence.

Messrs. Shamoun and Khoury further engaged in improper jury argument by repeatedly offering their personal opinions during trial, including opinions regarding the veracity of witnesses.

Mr. Khoury further engaged in improper jury argument by appealing to local bias by reference to his speaking only “Texas English.”

Mr. Shamoun further engaged in improper jury argument by making an improper appeal to religious bias by noting that because he “was raised Catholic,” he “believes in telling the truth.”

2. Messrs. Shamoun and Khoury’s improper argument was not invited or provoked.

The improper and incurable jury argument by Messrs. Shamoun and Khoury was not invited or provoked by Plaintiffs or their counsel. Plaintiffs’ counsel did not insult or denigrate Defendants or their counsel personally, did not refer to evidence outside the record, did not offer personal opinions to the jury, did not make improper appeals to local or religious bias, and did not otherwise invite or provoke the improper jury argument identified above.

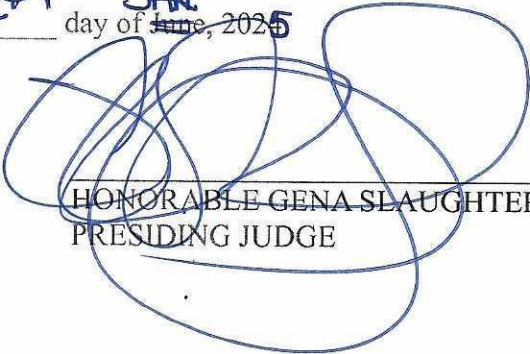
3. Messrs. Shamoun’s and Khoury’s improper jury argument was incurable.

Messrs. Shamoun and Khoury’s improper and incurable argument began in voir dire and continued through closing argument, continued despite multiple sustained objections and repeated admonishment by the Court, and constituted the type of improper argument that is generally considered incurable. That Court finds that the improper jury argument identified above, including the unsubstantiated personal attacks on Plaintiffs, Plaintiffs’ counsel, and Plaintiffs’ expert witness; referring to evidence outside the record in closing argument; injecting personal opinions; and

appealing to local and religious bias, was so pervasive, inflammatory, and prejudicial that it could not be cured. Considered as a whole, this improper conduct was reasonably calculated to cause—and did cause—such prejudice to Plaintiffs that a withdrawal by counsel or instruction by the Court, or both, could not eliminate the probability that it resulted in an improper verdict. The Court finds that, considered as a whole, this improper and incurable jury argument probably resulted in an improper verdict against Plaintiffs.

Based on these findings, and for the reasons set forth in the Motion, the Court is of the opinion that Plaintiffs' Motion should be, and hereby is, **GRANTED**. The jury verdict is hereby set aside for new trial.

SO ORDERED this 7th day of JAN, 2025



HONORABLE GENA SLAUGHTER
PRESIDING JUDGE