

Company owner, project manager get 2 years for laborer's death at Milpitas mansion

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Updated: 08/04/2015 06:28:59 AM PDT

MercuryNews.com

In a rare criminal case that sends a stern warning to the Bay Area's booming construction industry, the project manager and owner of an Alameda County construction company have each been sentenced to two years in jail for involuntary manslaughter after a wall of dirt crushed a laborer to death as he worked on a Milpitas mansion.

Raul Zapata, 39, died in 2012 at the construction site of the split-level 5,800-square-foot home he was helping to build on Calaveras Ridge Drive, just three days after city building inspectors had red-tagged the project after heavy rains. Fellow workers watched helplessly as the dirt collapsed, sending thousands of pounds of rocks and dirt raining down on Zapata.

The Santa Clara County District Attorney's Office argued that Zapata's death was avoidable and filed involuntary manslaughter charges against construction company owner Richard Liu, 53, and project manager Dan Luo, 37, -- even though Liu was in China at the time, not at the job site. Their convictions and Friday's sentencing capped an rare jury trial in such workplace deaths, which are typically settled through fines.

"This is certainly the first instance of its kind I've ever heard of," said Dave Cogbill, executive director of the California Building Industry Association.

The judge's decision comes as Alameda County prosecutors investigate whether criminal charges are warranted in the deadly collapse of a deck at a Berkeley apartment complex that killed six people and injured seven in June.

In the Milpitas case, the two men lacked experience building on steep hillsides and cared more about saving money than their workers' safety, prosecutor Bud Porter successfully argued. Among their transgressions, he contended, was that they ignored a stop-work order issued by a Milpitas building inspector who was worried that after days of heavy rain an unsupported wall would collapse. Three days later, on Jan. 28, 2012, the wall gave way as Zapata was working next to it in a trench.

"This wasn't an accident," Porter said. "It was a homicide."

It took the jury just over a day in late May to convict the two men after a 2½ month trial. Both were found guilty of felony involuntary manslaughter; Luo was also found guilty of three felony labor code violations.

Santa Clara County Superior Court Judge William J. Monahan on Friday imposed the minimum jail sentence of two years. He rejected the defense's bid for community service and the prosecutor's request for the maximum of four years in jail. Both men were immediately taken into custody Friday after Porter argued that they were a flight risk. Luo is a Chinese citizen and Liu has extensive ties to China.

Porter said he believes it may be the first time in more than 30 years that a California jury has convicted an owner or manager of involuntary manslaughter in a workplace death. The last time he could find was in 1982, when a Los Angeles County jury convicted the manager of a water reclamation plant in Burbank after two workers who lacked gas masks died after inhaling fumes.

The state Department of Occupational Safety and Health Act only has about 20 or so investigators, Porter

said, limiting how many prosecutions are brought, and most counties don't have enough prosecutors to handle the time-consuming cases.

In 2013, the most recent year records are available, 61 construction workers died on the job in California, according to the U.S. Bureau of Labor Statistics.

Liu was a real estate agent who ran his construction company, U.S.-Sino Investment, on the side. He has since lost his real estate license and general contractor's license, Porter said.

The owner of the property, Wesley Chen, had agreed to pay Liu about \$730,000 to build the house after making his fortune as an executive for an Atlanta-based company that makes products such as electronic seals for cargo containers. Chen had nothing to do with the construction and testified for the prosecution.

Zapata, 39, of Zacatecas, Mexico, was in his second week working on the hillside project for \$25 an hour. He is survived by his wife and three children.

Liu has also been sued in civil court by the victim's family. Liu's lawyer in both cases, Michael Reiser, vowed to appeal the verdict, blaming a subcontractor's negligence for Zapata's death and saying that Porter tried to play off the jury's prejudices about Chinese people being cheap. Porter vehemently denied that, calling the accusation "pathetic."

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