

Appeal lost in quake deaths

Tonya Strickland and AnnMarie Cornejo, San Luis Obispo Tribune, 6-25-10

Property owners are ultimately liable if they wait to retrofit their unreinforced buildings, regardless of whether they plan to meet a deadline for earthquake strengthening, the 2nd District Court of Appeal ruled this week.

The case clarifies for the first time the expectations on building owners throughout California, officials said.

The Ventura-based appellate court on Monday ruled against Mary Mastagni of Paso Robles, who had appealed the 2008 judgment against her over the collapse of the Acorn Building that killed two women during the 2003 San Simeon Earthquake.

Jennifer Myrick, 20, and Marilyn Frost-Zafuto, 55, both worked in a clothing shop in the Acorn Building in downtown Paso Robles. They were crushed by falling bricks as the building collapsed.

In finding for the plaintiffs in 2008, the Superior Court jury decided Mastagni and several trusts and businesses owned by her family were responsible for the 111-year-old Acorn Building and negligent in its maintenance and operation. They recommended \$2 million be paid to the families of the deceased from Mastagni and her trusts.

The appellate court, which heard arguments in May, upheld the ruling and award.

In the appeal, the defendants said they did not have to retrofit their building until 2018, which was the city's retrofit deadline.

However, the appellate court ruled that the deadline didn't protect them – nor any other building owner.

The Mastagnis knew of the risks their unreinforced Paso Robles building posed in 1998, according to the ruling, when they had a structural engineer prepare plans to retrofit it. Still, they never followed through on it, the ruling states.

Reaction to ruling One of Mastagni's lawyers, Robert Kaufman with Brown, Brown & Klass in Agoura Hills, said they are still deciding whether to file a petition to the California Supreme Court. The deadline to do so is Aug. 2.

Until then, the ruling is considered "a work in progress," said Fred Turner, a staff structural engineer at the state's Seismic Safety Commission.

If Mastagni does not appeal to the high court, or the Supreme Court declines to take up the case, the appellate court ruling sticks, and the case will become law and extend to owners of all vulnerable buildings such as hospitals, public schools and universities, Turner said. Should the Supreme Court hear the case, its ruling will prevail.

Allison Frost-Phillips, Frost-Zafuto's daughter, said she and the other plaintiffs are still shattered by the loss of their loved ones but are thankful that the ruling may save others from such a loss.

"I'm very grateful that this tells building owners that they can't wait until deadlines anymore," said Frost-Phillips, now 25 and living in Texas. "And, as this proves so true, you don't know when a natural disaster like an earthquake will hit — so you have to act now."

Meanwhile, Mastagni “is disappointed with the ruling,” Kaufman said, because she believed she had more time to retrofit.

Her lawyers also believe the ruling will cause businesses to shutter their doors throughout the state if building owners decide the risk of liability is too great and they are unable to pay for retrofits now, Kaufman said.

Further, Kaufman questions how building owners can obtain insurance, now that a court places clear liability on them.

Meeting deadlines Paso Robles had 44 buildings affected by the city’s February 2007 retrofitting deadline, which was moved up because of the earthquake.

Today, about two or three of those buildings remain empty and without retrofit, officials said, and can’t be reused until they are reinforced.

San Luis Obispo has 27 buildings still to be retrofitted — down from the 126 structures first identified by the city years ago.

Five of the remaining buildings are currently under construction; eight buildings, facing a 2012 deadline, have been partially strengthened.

In February, the City Council gave developers of three large future projects — Garden Street Terraces, Chinatown and the Naman project — until 2015 to complete retrofits on a total of 11 buildings.

San Luis Obispo’s City Attorney Christine Dietrick said she was not surprised by the ruling, adding the city’s mandated deadlines for the remaining buildings would not change because of the recent court decision.

“The responsibility to do a detailed analysis of the building’s risk falls on the building owner, not the city,” she said.

San Luis Obispo’s economic development manager, Claire Clark, said she plans to include the ruling in an upcoming newsletter to make sure that city’s building owners are aware of it.

The city must weigh the livelihood of many people, she said, versus the safety of a building if threatened by an uncertain event.

“The San Simeon Earthquake brings a sense of urgency forward, and another local earthquake would do that as well,” Clark added. “But there is also a balancing that all government needs to do when looking at how to move forward with any type of regulatory process.”