

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

JEFFREY ZICH )  
 )  
 Plaintiff, )  
 v. )  
 )  
 FOCUS CONSTRUCTION, INC, an Illinois )  
 Corporation, and MB EVANSTON SHERMAN )  
 L.L.C.; a Illinois Corporation; SHERMAN PLAZA )  
 PARTNERS, LLC A foreign corporation; )  
 SPV, INC., an Illinois Corporation; )  
 SHERMAN PLAZA VENTURE LLC An )  
 Illinois Corporation, HUEN ELECTRIC, INC., an )  
 Illinois Corporation; DENK & ROCHE )  
 BUILDERS, INC., An Illinois Corporation; )  
 K & K Iron WORKS, an Illinois Corporation, )  
 NOVA FIRE PROTECTION, INC., an Illinois )  
 Corporation; and GREAT LAKES PLUMBING )  
& HEATING CO., an Illinois Corporation. )  
 )  
 Defendants. )

No.: 07 L 010817

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FOCUS CONSTRUCTION, INC.; SHERMAN )  
 PLAZA PARTNERS, LLC; SPV FINANCE )  
 LLC; SHERMAN PLAZA VENTURE LLC, )  
 and SPV, INC., )  
 )  
 Defendants/Third-Party Plaintiffs, )  
 )  
 v. )  
 )  
 CITY OF EVANSTON, )  
 )  
 Intervenor/Third-Party Defendant. )

**MOTION OF NOVA FIRE PROTECTION, INC.. FOR SUMMARY JUDGMENT**

Defendant, NOVA FIRE PROTECTION, INC. (hereafter, 'NOVA'), by and through their attorney, LAW OFFICES OF LOWELL D. SNORF, III, moves this Honorable Court pursuant to 735 ILCS 5/2-1005 (b) for summary judgment as to Count VIII of Plaintiff's Second Amended Complaint at Law:

**I  
BACKGROUND AND PROCEEDINGS TO DATE**

The plaintiff is JEFFREY ZICH. One defendant is NOVA FIRE PROTECTION, INC. NOVA is a fire sprinkler installer and contractor. On **August 9, 2006**, NOVA was the sprinkler contractor hired by Focus Construction, Inc. to install fire sprinklers at Sherman Plaza located at 1620 Sherman Road, Evanston, Illinois.

On **August 9, 2006** the City of Evanston's chief electrical inspector, JEFFREY ZICH, claims to have fallen down the first step of stairwell 5-C at the Sherman Avenue condominium project. As a result of the **August 9,**

2006, fall on **May 5, 2008**, JEFFREY ZICH filed a nine count second amended complaint. (See Exhibit 'A', Second Amended Complaint). Count VIII of the second amended complaint is directed against NOVA FIRE PROTECTION, INC. On **October 14, 2008** NOVA answered Count VIII of plaintiff's second amended complaint, asserting affirmative defenses. (See Exhibit 'B', NOVA'S Answer to Plaintiff's Second Amended Complaint). On **October 28, 2008** plaintiff answered NOVA'S affirmative defenses. (See Exhibit 'C', Plaintiff's answers to NOVA'S affirmative defenses).

## II STATEMENT OF FACTS

On **August 9, 2006**, JEFFREY ZICH was a chief electrical inspector for the City of Evanston. The **August 9, 2006** accident occurred on stairwell 5-C at 1620 Sherman Avenue, a large 26 story condominium project in the City of Evanston. (See Exhibit 'D', April 20, 2009 Discovery Deposition of JEFFREY ZICH, p. 32). As a City of Evanston electrical inspector, on **August 9, 2006** ZICH was to inspect stairway lighting at the condominium project. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 32, 34). He met Jim Sitter of Huen Electric at 1:30 p.m. at the fifth floor corridor. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 38, 43). They then walked down the hallway to stairwell 5-C. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 40). JEFFREY ZICH'S fall occurred within a matter of seconds of his entering stairwell 5-C. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 44).

JEFFREY ZICH says he opened the metal door to stairwell 5-C. The metal door opened into the stairway. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 46, 112). The door closed. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 47). ZICH was going to look at lighting in the stairway. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 161). JEFFREY ZICH was preparing to walk down the stairs. ZICH opened the door, closed the door, looked at the light mounted behind the door and walked toward the down stairway. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 113). The stairwell was constructed of steel and was gray in color. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 35). JEFFREY ZICH'S right hand was holding the right hand railing and in his left hand he held a clipboard. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 48, 145). He was looking at the light in front of him. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 160). JEFFREY ZICH looked down to make his first step. When he stepped down his right foot flew out from underneath him and he went down the stairs. (See Exhibit 'D', Discovery

Deposition of JEFFREY ZICH, p. 47-48). At the time of his fall, he did not see anything on the stairs. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 48). JEFFREY ZICH slipped and fell down three to four steps. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 50). JEFFREY ZICH said he slipped on taping material and his foot went out from underneath him. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 55). The drywall tape was paper-like; it appeared as though it was on the first step. He feels his slip and fall was caused by dust, dirt and white drywall tape on the first stair. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 123, 134). He did not know who created the dirt, or the dust that was on the first step in stairwell 5-C. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 107). The taping material made it like stepping on ice. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 55). JEFFREY ZICH did not take possession of the taping material upon which he fell. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 56).

The color of the steps was 'metal-gray'. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 124). The piece of drywall tape was six inches. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 124).

JEFFREY ZICH was asked about NOVA'S involvement at the construction site. He did not know NOVA'S responsibilities at Sherman Plaza. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 152). He did not know what NOVA was doing when he fell. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 152). He had no knowledge that NOVA left debris on the stairwell 5-C. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 152). He never complained to anyone that NOVA was leaving stairwell debris in stairwell 5-C. JEFFREY ZICH had no personal knowledge NOVA left the debris in stairwell 5-C. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 153). He had no knowledge NOVA did not properly maintain the job site. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 153). He had no knowledge that NOVA had anything to do with the stairway design. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 153), or that NOVA controlled the lighting. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 154). He had no knowledge that NOVA did not clean up its work site or that NOVA'S employees were improperly trained. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 154). He had no knowledge that NOVA allowed its construction debris to get onto stairwell 5-C. He had no knowledge NOVA did anything to cause him to fall on the stairwell debris. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 155). He had no knowledge NOVA created the hazard upon which he fell. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 155). He

had no records of any type indicating NOVA placed construction debris or trash on stairwell 5-C. He had no knowledge that NOVA was notified of stairwell debris. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 157). JEFFREY ZICH had no knowledge that NOVA did anything or failed to do anything to cause him to trip and fall as alleged in his second amended complaint. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 158).

JEFFREY ZICH did not know where the drywall tape came from. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 170). He had no idea how long the tape had been on the stairs or who put it there. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 163, 170).

On **March 23, 2009**, NOVA forwarded a S.C.R. 214 Request to Produce to JEFFREY ZICH asking for documents or records showing NOVA left construction debris on the stairs where JEFFREY ZICH fell and asking for records or documentation showing NOVA created the hazard. On **April 20, 2009**, plaintiff answered NOVA'S request to produce, but did not have any responsive records. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, deposition exhibits '9 and 10'). On **March 23, 2009**, NOVA also sent plaintiff interrogatories asking if plaintiff had any knowledge NOVA created the stair hazard. On **April 20, 2009**, under oath, plaintiff answered NOVA'S interrogatories, by simply stating "investigation continues". Id. Plaintiff does not have any evidence NOVA was in any way responsible for creating the hazard upon which JEFFREY ZICH fell. To further support its motion for summary judgment, NOVA attaches the affidavit of William C. Harvey, Vice-President and Secretary of NOVA. (See Exhibit 'E', attached).

### III ARGUMENT

#### JEFFREY ZICH HAS FAILED TO ESTABLISH NOVA BREACHED ANY DUTY TO HIM, OR WAS A PROXIMATE CAUSE OF HIS SLIP AND FALL.

In order to hold NOVA responsible for JEFFREY ZICH'S fall, it must be established NOVA owed a duty to JEFFREY ZICH. Similarly, it must be established NOVA'S actions or inactions were a proximate cause of JEFFREY ZICH'S fall and his injuries.

JEFFREY ZICH was asked to explain what knowledge he had that NOVA left construction debris on stairwell 5-C. JEFFREY ZICH had no knowledge NOVA did anything to cause his fall. (See Exhibit 'D', Discovery Deposition of JEFFREY ZICH, p. 155, 156). The filed pleadings, JEFFREY ZICH'S **April 20, 2009** deposition transcript with verified discovery responses, and Mr. Harvey's affidavit fail to establish a material fact

NOVA was responsible for JEFFREY ZICH'S **August 9, 2006** stairwell fall. (See Exhibit 'E', attached).

WHEREFORE, because there is no material issue of fact sustaining the allegations contained in Count VIII of plaintiff's second amended complaint, NOVA respectfully asks this court to grant a summary judgment in favor of NOVA FIRE PROTECTION, INC. and against JEFFREY ZICH and for a written finding pursuant to S.C.R. 304(a) that there is no just reason for delaying enforcement of this order.

Lowell D. Snorf, III  
LAW OFFICES OF LOWELL D. SNORF, III  
77 West Washington Street  
Suite 703  
Chicago, IL 60602  
Telephone: (312) 726-8961  
ATT #71148

Respectfully Submitted,

/Lowell D. Snorf, III  
Lowell D. Snorf, III

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No.: 07 L 010817

Honorable Judge James Egan

**MOTION OF NOVA FIRE PROTECTION, INC., FOR A FINDING THAT NOVA’S \$1,500.00 SETTLEMENT WITH JEFFREY ZICH IS IN GOOD FAITH PURSUANT TO 740 ILCS 100/2 (c) AND (d)**

Defendant, NOVA FIRE PROTECTION, INC., (hereafter, “NOVA”) through its attorney, LAW OFFICES OF LOWELL D. SNORF, III, moves this Honorable Court for a finding NOVA’S \$1,500.00 settlement with JEFFREY ZICH is in good faith pursuant to 740 ILCS 100/2 (c) and (d). In support of this motion NOVA states as follows:

1. Count VIII of plaintiff’s amended nine count complaint was filed against NOVA.
2. On **April 20, 2009** JEFFREY ZICH provided his discovery deposition. JEFFREY ZICH claimed to have fallen on drywall tape or other construction debris. JEFFREY ZICH did not know the source of the debris and JEFFREY ZICH had no personal knowledge NOVA was responsible for leaving the debris on stairwell

5-C. NOVA did not leave drywall tape on stairwell 5-C, nor otherwise create the alleged hazardous condition of which JEFFREY ZICH complains.

3. Accordingly, on **October 19, 2009** NOVA moved for summary judgment. Plaintiff did not dispute NOVA'S non-involvement for JEFFREY ZICH'S fall.

4. On **November 9, 2009** and **December 17, 2009** two settlement conferences were conducted before Judge Jennifer Duncan-Brice. Counsel for all parties attended the settlement conferences.

5. On **December 28, 2009** the entire case settled for **\$226,000.00**, including the resolution of the City of Evanston's 820 ILCS 305/5(b) workers' compensation lien. The agreed settlement breakdown as follows:

Levy Company:	\$100,000.00
Focus Construction Inc.:	\$100,000.00
Denk & Roche Builders, Inc:	\$ 10,000.00
K & K Iron Works:	\$ 10,000.00
Great Lakes Construction:	\$ 3,000.00
Nova Fire Protection, Inc.:	\$ 1,500.00
Huen Electric, Inc.:	\$ 1,500.00
Total:	<u>\$226,000.00</u>

6. Within the State of Illinois, there is a "strong public policy" favoring the peaceful settling of a claim. *In re Guardianship of Babb*, 162 Ill.2d 153, 642 N.E.2d 1195, 1199 (1994). Moreover, the Illinois Contribution Among Joint Tortfeasors Act provides that when a release or covenant not to sue is given in good faith, the party who settles with such a claimant is discharged from all liability for any contribution to any other tortfeasor. 740 ILCS 100/2 (c) and (d). In the instant case, Plaintiff, JEFFREY ZICH, has agreed to release NOVA, in exchange for valuable consideration totaling \$1,500.00 subject to a good faith finding and full release.

7. Accordingly, NOVA moves this court for the entry of a dismissal order dismissing NOVA from JEFFREY ZICH'S lawsuit, as well as a dismissal of NOVA from all counterclaims and cross-claims for contribution, filed, or which could have been filed, by any of the respective defendant(s), or any other parties, pursuant to the Illinois Contribution Among Joint Tortfeasors Act.

WHEREFORE, Defendant, NOVA respectfully requests this Honorable Court enter an order as follows:

- a, a finding NOVA'S \$1,500.00 settlement with JEFFREY ZICH is fair and reasonable and in good faith under 740 ILCS 100/2 (c) and (d);
- b, dismissing with prejudice and without costs, NOVA from the amended complaint of plaintiff, JEFFREY ZICH against NOVA; and

c, dismissing with prejudice and without costs any counterclaims or cross-claims for contribution, as filed by any of defendants in this case.

Respectfully Submitted,

By: /s/ Lowell D. Snorf, III  
Attorney for Defendant  
NOVA FIRE PROTECTION, INC.

LAW OFFICES OF LOWELL D. SNORF, III  
77 West Washington Street  
Suite 703  
Chicago, Illinois 60602  
Telephone: (312) 726-8961