

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-LAW DIVISION

JOSEPH NAVARRO,

Plaintiff,

v.

LORETTO HOSPITAL,

Defendant.

No.: 14 M1 300567

Transferred to Law Division

**735 ILCS 5/2-1005(b) MOTION OF DEFENDANT, LORETTO HOSPITAL, FOR
SUMMARY JUDGMENT AGAINST PLAINTIFF, JOSEPH NAVARRO**

Defendant, LORETTO HOSPITAL, pursuant to 735 ILCS 5/2-1005(b) moves this honorable court for summary judgment on Count I (Construction Negligence) and Count II (Premises Liability) of JOSEPH NAVARRO's Complaint at Law. Under Count I, Plaintiff has not factually shown LORETTO HOSPITAL controlled the methods JOSEPH NAVARRO used to construct a temporary wall, breached any duty to JOSEPH NAVARRO or was the proximate cause of JOSEPH NAVARRO's **April 17, 2012** ladder/stairway fall at LORETTO HOSPITAL. Under Count II, JOSEPH NAVARRO has not factually established the A-frame ladder off which JOSEPH NAVARRO fell was a premise defect, that LORETTO HOSPITAL had actual or constructive notice of JOSEPH NAVARRO's ladder set-up, or that LORETTO HOSPITAL otherwise was a proximate cause of JOSEPH NAVARRO's **April 17, 2012** ladder/stairway fall at LORETTO HOSPITAL.

**I.
THE PARTIES**

The Plaintiff is JOSEPH NAVARRO (hereinafter "NAVARRO"). On **April 17, 2012**, NAVARRO was a carpenter employee of Ujamaa Construction, Inc. (hereafter "Ujamaa"). The business of Ujamaa is general construction. The Defendant is LORETTO HOSPITAL (hereafter "LORETTO"). LORETTO is the owner of the hospital located at 645 S. Central Ave. in Chicago, Illinois. On **April 17, 2012**, NAVARRO was performing construction work at LORETTO.

**II.
BACKGROUND**

On **November 10, 2009**, LORETTO signed a REDEVELOPMENT AGREEMENT with the City of Chicago to rehabilitate 100 patient rooms at LORETTO. The REDEVELOPMENT AGREEMENT incorporated

the AIA DOCUMENT A101-2007, STANDARD FORM OF AGREEMENT BETWEEN OWNER, LORETTO HOSPITAL, AND CONTRACTOR, UJAMAA CONSTRUCTION, INC. and the AIA DOCUMENT A201-2007, GENERAL CONDITIONS made Ujamaa responsible for the construction project. On **November 1, 2011**, LORETTO hired Ujamaa to construct LORETTO's hospital improvements. The late afternoon of **April 17, 2012**, as part of the LORETTO construction project, Ujamaa told NAVARRO to build a temporary separating fire wall near the top of stairwell 5-W. To build the wall, NAVARRO used an A-frame ladder to hang drywall. On **April 17, 2012**, after NAVARRO set-up his A-frame ladder atop LORETTO's stairwell 5-W, NAVARRO fell off his ladder down the stairs sustaining injuries. On **April 20, 2012**, NAVARRO filed a workers' compensation case entitled *Navarro v. Ujamaa Construction, Inc.*, case no. 12-WC-013967. This claim is pending. On **March 4, 2014**, NAVARRO filed a two count Complaint against LORETTO. (Exhibit 'A'). On **May 14, 2014**, LORETTO answered the Complaint, asserting First Affirmative Defense. (Exhibit 'B'). On **May 23, 2014**, NAVARRO answered LORETTO's First Affirmative Defense. (Exhibit 'C'). On **July 8, 2014**, LORETTO's Third-Party Contribution Complaint against NAVARRO's employer, Ujamaa, was dismissed with prejudice. (Exhibit 'D').

III. **STATEMENT OF FACTS**

A. Deposition of Joseph Navarro

On **January 12, 2015**, NAVARRO was deposed. (Exhibit 'E', Deposition of Joseph Navarro, with original deposition sub-exhibits 1-14). During **2004 - 2013**, NAVARRO received carpentry training, which training included ladder set-up, ladder safety scaffolds, and fall protection. (*Id.* at pg. 21-22). On **March 30, 2012**, NAVARRO was hired by Ujamaa as a carpenter. (*Id.* at pg. 64). On **April 17, 2012**, NAVARRO was two days at the LORETTO job. (*Id.* at pg. 64, 66). NAVARRO knew how to use A-frame ladders. (*Id.* at pg. 24). On **April 17, 2012**, at LORETTO, NAVARRO was using an A-frame ladder, supplied by Ujamaa. (*Id.*).

Before the **April 17, 2012** accident, NAVARRO had only been at LORETTO a few days. (*Id.* at pgs. 65, 66). Bruce Laurie from Ujamaa directed NAVARRO's carpentry work and told NAVARRO what to do and where to do it. (*Id.* at pg. 67-68, 70).

The late afternoon of **April 17, 2012**, someone from LORETTO told Bruce Laurie at Ujamaa to build a temporary wall atop stairwell 5-W to keep people from accessing the hospital floor. (*Id.* at pg. 71-72). NAVARRO said, the specifications for the wall came from a guy at LORETTO, but NAVARRO did not

know the person's name. (*Id.* at pg. 72). NAVARRO did not know he was going to build the wall until 15 minutes before, when Ujamaa ordered him to build it. (*Id.* at pg. 73). To build the wall, Ujamaa did not give NAVARRO any construction plans. (*Id.* at pg. 67). Bruce Laurie said Ujamaa employees had to stay late to finish the temporary wall because there was an Illinois Department of Public Health (IDPH) inspection on **April 18, 2012**. (*Id.* at pg. 73, 74). NAVARRO took his order from Bruce Laurie. (*Id.* at pg. 70).

Near the top of stairwell 5-W, NAVARRO started building the wall, installing the steel frame for the temporary wall. (*Id.* at pg. 74-75). NAVARRO says he was with his Ujamaa partner, Ronald Poholik, the whole time. (*Id.* at pg. 82). By 6:00 p.m., NAVARRO finished the steel frame. (*Id.* at pg. 75). NAVARRO then installed the frame studs near stairwell 5-W. (*Id.* at pg. 76).

To drywall the temporary wall, NAVARRO and Poholik first installed the interior drywall. (*Id.* at pgs. 77-78). NAVARRO then installed the exterior drywall, by the stairs. (*Id.* at pg. 77). To install the exterior drywall by stairwell 5-W, NAVARRO used one of Ujamaa's fiberglass A-frame ladders. (*Id.* at pg. 79). NAVARRO said he knew what the work space was going to be for the steel frame. (*Id.* at pg. 78).

NAVARRO set-up the ladder atop stairwell 5-W. (*Id.* at pg. 80). NAVARRO chose where he placed his ladder. (*Id.* at pg. 88). When NAVARRO set his ladder down, he locked the ladder spreaders. (*Id.* at pg. 97). His ladder fit within his workspace (*Id.*). No one from LORETTO was present when NAVARRO set up his ladder and no one from LORETTO saw where NAVARRO set-up his ladder. (*Id.* at pg. 82). Ronald Poholik was the only person seeing NAVARRO set-up his ladder. (*Id.* at pg. 80, 82).

After setting up the ladder atop the threshold of 5-W stairwell, NAVARRO climbed his ladder and Poholik passed him the drywall sheet to hang. (*Id.* at pgs. 87, 89, 108). When Poholik gave NAVARRO the drywall to hang, NAVARRO's knee was touching the top of the ladder. (*Id.* at pg. 89). NAVARRO had his own tool belt. (*Id.*). The drywall power gun and the drywall sheets were supplied by Ujamaa. (*Id.*).

While NAVARRO was on the ladder eight feet off the ground, Poholik handed the drywall sheet to NAVARRO. (*Id.* at pg. 91). NAVARRO could barely reach the top. (*Id.* at pg. 92). While atop the ladder, NAVARRO grabbed the drywall sheet with both hands and then held it with his left hand (*Id.*). While holding the drywall sheet with his left hand, with his right hand NAVARRO grabbed a drywall screw from his tool belt. (*Id.* at pgs. 93-94). While his left hand was still holding the drywall sheet, he put the screw on the magnetic tip of the drywall gun. (*Id.* at pg. 94). With his right hand, he then drilled the first screw through the drywall sheet into the metal stud. (*Id.*). He inserted a second screw into the drywall gun. (*Id.*). He started

to drill, but the second screw gave him a hard time. (*Id.*). He gave it some pressure. (*Id.*). The second screw was high up and “out of bounds.” (*Id.*). NAVARRO lost his balance, fell off the ladder and down one flight of stairs. (*Id.* at pg. 95). NAVARRO later said that while he was installing drywall, his ladder gave way and he fell down the stairs; he also said, “I don’t know what happened.” (*Id.* at pgs. 129, 130).

There was nothing defective about LORETTO’s stairs or railings. (*Id.* at pgs. 95, 102, 103). The ladder was not defective. (*Id.* at pg. 96). The stairwell threats were not slippery or damaged. (*Id.* at pg. 97). The VCT tiles and stair threshold were not defective. (*Id.* at pg. 102). The stairwell 5-W lighting was good. (*Id.*)

Before the accident, NAVARRO climbed the ladder once and did not re-position his ladder. (*Id.* at pgs. 97, 98). Before he fell, NAVARRO said his ladder was set up between two to four minutes. (*Id.* at pgs. 99-100). NAVARRO never complained to either Ujamaa or LORETTO his ladder placement was unsafe. (*Id.* at pg. 98).

Neither NAVARRO nor Ujamaa took measurements. (*Id.* at pg. 101). No one from LORETTO told NAVARRO how to use the Ujamaa ladder. (*Id.*). NAVARRO did not take instructions from LORETTO on how to mount the drywall sheets. (*Id.* at pgs. 101-102). NAVARRO said Poholik saw him fall and Poholik tried to grab him before NAVARRO fell. (*Id.* at pgs. 108, 109). NAVARRO said, Poholik saw the accident. (*Id.* at pgs. 107-109, 114). No one from LORETTO was present when NAVARRO fell off the ladder. (*Id.* at pg. 114).

B. Deposition of Ronald Poholik

On **February 9, 2015**, Ronald Poholik, NAVARRO’s work partner, was deposed. (See Exhibit ‘F’, Deposition of Ronald Poholik, with original deposition sub-exhibit 1). On **April 17, 2012**, Poholik was an Ujamaa carpenter working with NAVARRO to hang the drywall on 5-W. (*Id.* at pg. 5). The Ujamaa crew at LORETTO included JOSEPH NAVARRO, supervisor, Bruce Laurie, Jose Arrellano, and Ronald Poholik. (*Id.* at pgs. 7-9).

45 minutes before NAVARRO’s fall, Bruce Laurie told NAVARRO and Poholik to build the wall. (*Id.* at pg. 27). There were no prints or plans to build the wall. (*Id.* at pg. 35). Bruce Laurie told NAVARRO to build the wall and where to place it. (*Id.* at pgs. 26-28, 29). On his own, NAVARRO then laid down the wall tracking, screwed the track to the ceiling and then put the ribs in. (*Id.* at pg. 9). LORETTO did not give directions to NAVARRO on how NAVARRO was to build the temporary wall. (*Id.*). NAVARRO started the

wall framing toward the end of the day. (*Id.*). Poholik was not present when NAVARRO installed the wall framing. (*Id.* at pgs. 10, 36). Poholik only joined NAVARRO after NAVARRO finished the wall framing. (*Id.* at pg. 36). NAVARRO and Poholik then hung the drywall for the temporary wall. (*Id.* at pg. 10). The wall was placed on top of the VCT tile. (*Id.* at pg. 11).

Poholik saw NAVARRO set-up the A-frame ladder. (*Id.* at pg. 13). NAVARRO set-up the ladder against the temporary wall but NAVARRO did not spread the ladder out. (*Id.*). No one was present from LORETTO when NAVARRO set-up his ladder. (*Id.*).

Poholik said, NAVARRO climbed up and down the ladder twice before NAVARRO fell off the ladder. (*Id.* at pg. 13-14). Poholik did not see NAVARRO fall off the ladder. (*Id.* at pg. 14). There were no LORETTO witnesses to NAVARRO's fall. (*Id.* at pgs. 17, 24).

Before NAVARRO fell, the last time Poholik saw NAVARRO was when NAVARRO was putting the top drywall piece on the wall. (*Id.* at pg. 14). NAVARRO's ladder may have been set-up 15 minutes. (*Id.*). At the time NAVARRO fell, NAVARRO was holding the drywall sheet and Poholik heard NAVARRO's screw gun activated. (*Id.* at pg. 15). Poholik said NAVARRO fell when NAVARRO was screwing the drywall screw into the sheet, the reactive force pushed NAVARRO back off the ladder. (*Id.* at pg. 16).

NAVARRO was not taking instructions from LORETTO on how to use his ladder. (*Id.* at pg. 16). At no time, did NAVARRO complain to Poholik his ladder was unstable or NAVARRO was unable to do his work at the 5-W location. (*Id.* at pg. 17). To Poholik, NAVARRO never complained he was having difficulty drilling into the studs. (*Id.* at pg. 18).

Poholik said, Bruce Laurie, Ujamaa superintendent/foreman was responsible for safety. (*Id.* at pg. 26). Because of an **April 18, 2012** IDPH inspection, Bruce Laurie told the Ujamaa crew the wall had to be built that afternoon. (*Id.*).

Poholik said NAVARRO should not be using a ladder atop the staircase and Ujamaa should have supplied NAVARRO with proper construction equipment. (*Id.* at pgs. 29-31). Poholik said no one from LORETTO encouraged the work to be completed. (*Id.*).

C. Deposition of Andrew Bruce Laurie

On **February 12, 2015**, Andrew Bruce Laurie was deposed. (See Exhibit 'G', Deposition of Andrew Bruce Laurie, with original deposition sub-exhibit 1). On **April 17, 2012**, Bruce Laurie was Ujamaa's

superintendent in charge of the 5-W work site and in charge of NAVARRO. (*Id.* at pg. 9). NAVARRO was injured the second day on the job at LORETTO. (*Id.* at pg. 6). Prior to construction of the 5-W wall, Ujamaa had in place a small partition on 5-W. (*Id.* at pg. 20). Because the IDPH would request an one hour separation everywhere, Ujamaa needed to build a complete separation wall. (*Id.*). Bruce Laurie told NAVARRO to build the temporary separation wall. (*Id.* at pgs. 9-10). The way the wall was constructed was left up to Ujamaa. (*Id.* at pg. 12).

To build the wall, NAVARRO had to measure or lay tracking down. (*Id.* at pg. 10). The bottom track was laid and then the top track. (*Id.*). After that, the ribs were cut measured and/or cut and installed in the steel frame. (*Id.*). While construction of the temporary wall was assigned to NAVARRO, Poholik came to help NAVARRO. (*Id.* at pg. 11).

When NAVARRO was building the wall, NAVARRO was not taking orders from LORETTO. (*Id.* at pg. 11). LORETTO did not tell NAVARRO to use a ladder or tell NAVARRO how to hang drywall. (*Id.* at pg. 12). NAVARRO was required to use a ladder for construction of the temporary wall. (*Id.* at pg. 24). Laurie said NAVARRO was pushing on a screw, one of which, forced him off the ladder. (*Id.*).

Laurie had no knowledge NAVARRO was having difficulty constructing the wall or NAVARRO's project was behind schedule. (*Id.* at pg. 12). After NAVARRO's fall, Jose Arrellano and Ronald Poholik then finished the wall. (*Id.* at pg. 16). Prior to NAVARRO's fall, Laurie did not receive any complaints by NAVARRO about NAVARRO's work space or safety at the job site. (*Id.* at pg. 17). No one from LORETTO was present when NAVARRO set-up his ladder and then fell down the stairs. (*Id.*). NAVARRO selected the Ujamaa ladder. (*Id.* at pg. 17-18). Ujamaa was responsible for job site safety and Ujamaa was in charge of the job. (*Id.* at pg. 18). One to two hours before the fall, John Pappone at LORETTO asked Ujamaa to build the wall. (*Id.* at pg. 9, 19). He does not know if NAVARRO overheard John Pappone's request. (*Id.* at pg. 20). Pappone's request was reasonable because the IDPH would request Ujamaa have a one-hour wall separation everywhere at LORETTO construction job. (*Id.*).

D. Deposition of Albert Lay

On **January 12, 2015**, Albert Lay was deposed. (See Exhibit 'H', Deposition of Albert Lay, with original deposition sub-exhibit 1-3, 10). Since **April 1, 2014**, Lay has been the Director of Support Services at LORETTO and succeeded John Pappone. (*Id.* at pgs. 17, 35). Lay was hired by LORETTO after NAVARRO's fall and after construction was finished. (*Id.* at pg. 21).

LORETTO hired Ujamaa as the general contractor. (*Id.* at 23). Ujamaa was responsible for the entire project. (*Id.* at pgs. 24, 50). On **April 17, 2012**, Ujamaa did not have drawings for the temporary wall. (*Id.* at pg. 44-45). Lay was not aware of any project violations. (*Id.* at pg. 56). Lay was familiar with the LORETTO HOSPITAL REDEVELOPMENT AGREEMENT. (*Id.* at pgs. 5-6, 57). Lay said, Steve Drucker, LORETTO's former CEO, signed the REDEVELOPMENT AGREEMENT on behalf of LORETTO. (*Id.* at pg. 57-58; sub-exhibit 1, pg. 53). Lay identified and was familiar with sub-exhibit 2 and sub-exhibit 3. (*Id.* at pgs. 30, 31, 35, 37, 61-64).

E. Deposition of Brent Spoolstra

On **February 12, 2015**, Ujamaa project manager, Brent Spoolstra, was deposed. (See Exhibit 'I', Deposition of Brent Spoolstra, with original deposition sub-exhibit 1-4). NAVARRO was told by Ujamaa to build the temporary wall. (*Id.* at pgs. 11, 19). For wall construction, NAVARRO took orders from Ujamaa. (*Id.* at pg. 19).

There were no construction plans to build the wall and LORETTO had nothing to do with the way NAVARRO built the wall on stairwell 5-W. (*Id.* at pg. 11). NAVARRO used an Ujamaa ladder and LORETTO did not supply NAVARRO with any tools for the job. (*Id.* at pg. 13). There were no safety violations against either LORETTO or Ujamaa for this job. (*Id.* at pg. 15). No one from LORETTO told NAVARRO how to use his ladder or how to hang the drywall. (*Id.* at pgs. 13, 16). LORETTO did not supervise Ujamaa as to constructability. (*Id.* at pg. 18).

Spoolstra identified the signed sub-exhibit 2, the AIA DOCUMENT A101-2007, STANDARD FORM OF AGREEMENT BETWEEN OWNER, LORETTO HOSPITAL, AND CONTRACTOR, UJAMAA CONSTRUCTION, INC.; and sub-exhibit 3, the AIA DOCUMENT A201-2007, GENERAL CONDITIONS. (*Id.* at pgs. 6, 7, 8, 11, 17).

F. Deposition of John Pappone

On **February 27, 2015**, former Vice President of Support Services at LORETTO, John Pappone, was deposed. (See Exhibit 'J', Deposition of John Pappone, with original deposition sub-exhibit 1-3). On **April 17, 2012**, Pappone was Vice President of Support Services at LORETTO. (*Id.* at pg. 6).

Pappone learned of NAVARRO's fall after it occurred. (*Id.* at pg. 14). Pappone did not see NAVARRO fall. (*Id.*). On **April 17, 2012**, NAVARRO was building a temporary wall atop stairwell 5-W. (*Id.*). Pappone did not tell NAVARRO how to frame the wall. (*Id.*). Pappone did not tell NAVARRO how to install the drywall. (*Id.*). Pappone never instructed NAVARRO on where to place NAVARRO's ladder.

(*Id.*). Before NAVARRO's fall, Pappone did not know of any complaints made to LORETTO NAVARRO's work site was unsafe. (*Id.* at pg. 14-15). Pappone did not see NAVARRO set up his A-frame ladder, did not know NAVARRO was using an A-frame ladder, did not know how long NAVARRO's ladder was set-up before NAVARRO fell and was not aware NAVARRO was building a temporary wall 2 or 3 feet from the stairwell. (*Id.* at pgs. 15, 33).

Pappone was not aware if anyone from LORETTO witnessed NAVARRO set-up his ladder. (*Id.* at pg. 15). No one from LORETTO told NAVARRO where to place his ladder. (*Id.*). LORETTO did not give NAVARRO instructions on how NAVARRO was to perform his drywall installation. (*Id.* at pg. 14). On **April 17, 2012**, NAVARRO was not using any of LORETTO's tools or equipment. (*Id.* at pgs. 15, 40). On **April 17, 2012**, Pappone did not control Ujamaa's construction, safety, or direct Ujamaa's employees. (*Id.* at pgs. 38-40).

It was Ujamaa's job to build the wall. (*Id.* at pg. 16). LORETTO did not place any LORETTO employees at the site to supervise Ujamaa's work. (*Id.*). LORETTO did not tell Ujamaa how to build the wall, where to build it or how to built it. (*Id.*). Before NAVARRO fell, Pappone was not aware of any hazardous conditions on stairwell 5-W. (*Id.*). Ujamaa supplied the construction materials for the wall. (*Id.*).

During the 5-W project, Pappone was not on the construction job site everyday. (*Id.* at pg. 19). LORETTO paid Ujamaa and Pappone checked on Ujamaa's work progress weekly. (*Id.* at pg. 21).

The temporary wall built by NAVARRO served as a fire stop as specified by PFB Architects. (*Id.* at pgs. 24-25). If Pappone had a construction issue, he would defer to PFB Architects. (*Id.* at pg. 29). LORETTO did not play a role in which subcontractors Ujamaa hired. (*Id.* at pgs. 30-31). Contractually, Pappone could stop work, if he observed safety hazard. (*Id.* at pgs. 37, 39). LORETTO did not have authority to change the way Ujamaa was doing its construction. (*Id.*). Ujamaa was to follow PFB Architects' guidance. (*Id.* at pg. 38). Pappone was not involved in the daily activities of Ujamaa for the 5-W project. (*Id.* at pg. 39). Pappone did not supervise Ujamaa employees. (*Id.*). LORETTO did not implement safety procedures at the 5-W construction site. (*Id.*). Pappone did not formulate safety precautions for the job site, and the equipment used at the 5-W job site was owned by Ujamaa. (*Id.* at pg. 40). Pappone did not conduct any post-accident site inspection. (*Id.* at pgs. 32-33).

Pappone knew the LORETTO HOSPITAL REDEVELOPMENT AGREEMENT. (*Id.* at pgs. 7, 8). Pappone said, Steve Drucker, LORETTO's former CEO, signed the REDEVELOPMENT AGREEMENT on behalf of

LORETTO. (*Id.* at pg. 41; sub-exhibit 1, pg. 53). Pappone was familiar with and identified sub-exhibit 2, the AIA DOCUMENT A101-2007, STANDARD FORM OF AGREEMENT BETWEEN OWNER, LORETTO HOSPITAL, AND CONTRACTOR, UJAMAA CONSTRUCTION, INC. and sub-exhibit 3, the AIA DOCUMENT A201-2007, GENERAL CONDITIONS. (*Id.* at pgs. 8-11).

F. Contracts

All three agreements were identified as true and accurate copies. (Exhibit H at pgs. 35, 57, 61-64; Exhibit 'I' at pgs. 7, 8, 17; Exhibit 'J' at pgs. 7, 9, 11). Under the AIA DOCUMENT A201-2007, GENERAL CONDITIONS, shown in multiple sub-exhibits 3, Ujamaa was to supervise and direct all work for the LORETTO 5-W project. Ujamaa was solely responsible for and had control over construction means, methods, techniques, sequences and procedures for coordinating all work for the project. (Exhibit 'H' at pg. 63, sub-exhibit 3, §3.3; Exhibit 'I', sub-exhibit 3, §3.3; Exhibit 'J', sub-exhibit 3, §3.3). Ujamaa was to supply labor, tools and job supplies. (Exhibit 'H', sub-exhibit 3, §3.4.1; Exhibit 'I', sub-exhibit 3, §3.4.1; Exhibit 'J' at pgs 10, 12, sub-exhibit 3, §3.4.1).

Ujamaa was responsible for contract performance, inspections and safety. (Exhibit 'H' at pg. 63, sub-exhibit 3, §3.3, §3.3.3, §10.1; Exhibit 'I', sub-exhibit 3, §3.3, §3.3.3, §10.1; Exhibit 'J', sub-exhibit 3, §3.3, §3.3.3, §10.1). Ujamaa was responsible for safety of job site workers. (Exhibit 'H' at pg. 63-64, sub-exhibit 3, §10.2; Exhibit 'I' at pg. 18, sub-exhibit 3, §10.2; Exhibit 'J' at pgs. 16-17, sub-exhibit 3, §10.2). Ujamaa was to indemnify LORETTO for all losses relating to Ujamaa's work. (Exhibit 'H', sub-exhibit 3, §3.18; Exhibit 'I', sub-exhibit 3, §3.18; Exhibit 'J', sub-exhibit 3, §3.18).

IV. **STANDARD FOR SUMMARY JUDGMENT BASED ON** **CONSTRUCTION NEGLIGENCE AND PREMISES LIABILITY**

A grant of summary judgment is appropriate if the pleadings, depositions, admissions, and affidavits on file, liberally construed in favor of the nonmoving party, show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. *O'Gorman v. F.H. Paschen, S.N. Nielsen, Inc.*, 2015 WL 1281750 (Ill. App. 1 Dist. 2015); 735 ILCS 5/2-1005(b). Unsupported complaint allegations do not create fact issues. *Kimborough v. Jewel Companies*, 92 Ill. App. 3d 813, 416 N.E.2d 328 (1st Dist. 1981).

A defendant moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624; 872 N.E.2d 431, 437 (2007). The defendant may meet his burden of proof either by

affirmatively showing that some element of the case must be resolved in his favor or by establishing “that there is an absence of evidence to support the nonmoving party’s case.” *Nedzveckas*, 374 Ill. App. 3d at 624, 872 N.E.2d at 437 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986)). In other words, there is no evidence to support the plaintiff’s complaint. *O’Gorman v. F.H. Paschen, S.N. Nielsen, Inc.*, 2015 WL 1281750 (Ill. App. 1 Dist. 2015).

Under Count I (Construction Negligence), to survive a motion for summary judgment, plaintiff must present sufficient evidence LORETTO controlled plaintiff’s 5-W stairwell work. *Fonseca v. Clark Constr. Group, LLC*, 10 N.E.3d 274, 2014 IL App (1st) 130308 (1st Dist. 2014). Under Count I (Construction Negligence), plaintiff cannot establish LORETTO’s construction negligence unless he establishes LORETTO’s control over his 5-W construction activities. *Martens v. MCL Constr. Corp.*, 347 Ill. App. 3d 303, 314, 807 N.E.2d 480, 489 (2004).

Under Count II (Premises Liability), to survive a motion for summary judgment plaintiff must show LORETTO knew or should have known a premises defect existed and involved a reasonable risk of harm. LORETTO cannot be liable to plaintiff where there is no evidence LORETTO knew of the dangerous condition. *Joyce v. Mastri*, 371 Ill. App. 3d 64, 79-80, 861 N.E.2d 1102, 1114 (2007). NAVARRO must also establish the work hazard was a dangerous condition or defect in the land. *Recio v. GR-MHA Corp.*, 366 Ill. App. 3d 48, 851 N.E.2d 106 (2006) [roofer falling off a ladder did not establish premises liability as to evidence of defect in building or land]; *Schaefer v. Universal Scaffolding & Equipment, LLC*, 2015 WL 326876 (S.D.Ill. 2015). [premises liability inapplicable against owner that did not install scaffolding which fell on worker].

V. **ARGUMENT**

A. UNDER COUNT I (CONSTRUCTION NEGLIGENCE) OF PLAINTIFF’S COMPLAINT, LORETTO IS ENTITLED TO SUMMARY JUDGMENT AS LORETTO DID NOT RETAIN CONTROL OVER NAVARRO’S 5-W ACTIVITIES

Generally, a property owner who employs an independent contractor is not liable for the acts or omissions of the latter. *O’Gorman v. F.H. Paschen, S.N. Nielsen, Inc.*, 2015 WL 1281750 (Ill. App. 1 Dist. 2015). In Plaintiff’s Complaint, Count I, Plaintiff alleges LORETTO is liable for Plaintiff’s injury under a theory of construction negligence. In Illinois, construction negligence claims fall under the RESTATEMENT (SECOND) OF TORTS §414 (1965), which states in relevant part:

"One who entrusts work to an independent contractor, but who retains the control

of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care."

RESTATEMENT (SECOND) OF TORTS, §414, COMMENT C, AT 388 (1965).

Under the above exception, an employer of a contractor can nevertheless be subject to vicarious liability for the contractor's negligence if the employer retains control over the operative details of the contractor's work. (*Id.*). Alternatively, even in the absence of such control, an employer may be subject to direct liability where it assumes supervisory duties on a construction project and fails to exercise them with reasonable care. *Recio v. GR-MHA Corp.*, 366 Ill. App. 3d 48, 851 N.E.2d 106 (1st Dist. 2006).

To state a claim for negligence under §414, a plaintiff must allege that the defendant owed him a duty and breached that duty, and that plaintiff's injury was proximately caused by the breach. *Kotecki v. Walsh Constr. Co.*, 333 Ill. App. 3d 583, 776 N.E.2d 774 (1st Dist. 2002). Whether a duty exists is a question of law and under §414, whether such a duty is present turns on whether the defendant controls the work in such a manner that he should be held liable. *Id.* at 587.

No facts have been established LORETTO directed NAVARRO, that any LORETTO employee was present when NAVARRO set-up his ladder or that LORETTO knew of any dangerous construction activity. (Exhibit 'E' at pgs. 82, 84, 101-102; Exhibit 'F' at pgs. 9, 13, 14, 16, 17, 24; Exhibit 'G' at pgs. 13-14). Neither the contracts nor Ujamaa's ongoing 5-W construction activities show any contractual, supervisory or operational control by LORETTO over NAVARRO's work. (Exhibit 'E' at pgs. 101, 102; Exhibit 'F' at pg. 9; Exhibit 'G' at pgs. 11, 12; Exhibit 'H', sub-exhibit 3, §3.3 and Art. 10; Exhibit 'J' at pgs 14-17). For the 5-W temporary wall, Ujamaa, not LORETTO, directed NAVARRO. (Exhibit 'E' at pgs. 67, 68, 101-102; Exhibit 'F' at pgs. 9, 16; Exhibit 'G' at pgs. 9, 12; Exhibit 'I' at pgs. 11, 13, 18-19). Ujamaa told NAVARRO to build the wall and Ujamaa told NAVARRO where to build it. (Exhibit 'E' at pgs. 67, 68, 70, 71; Exhibit 'F' at pgs. 26, 28, 29, 35, 36; Exhibit 'G' at pgs. 9-11; Exhibit 'I' at pgs. 11, 19). LORETTO did not give directions to either Ujamaa or NAVARRO on how NAVARRO was to build the wall. (Exhibit 'E' at pgs. 101, 102; Exhibit 'F' at pg. 9; Exhibit 'G' at pg. 12; Exhibit 'I' at pgs. 11, 13; Exhibit 'J' at pgs. 14, 15). LORETTO did not direct Ujamaa on safety. (Exhibit 'J' at pgs. 39-40). Supplies and equipment were the responsibility of Ujamaa. (Exhibit 'H', sub-exhibit 3, §3.4.1). Because Ujamaa was in charge of the job site, Ujamaa was responsible for NAVARRO's job site safety. (Exhibit 'F' at pg. 26; Exhibit 'G' at pg. 18; Exhibit 'H' at pg. 37, sub-exhibit 3, Art.10; Exhibit 'I' at pg. 18; Exhibit 'J' at pg. 16, 17). Employees from

LORETTO walked the job site, but never instructed Ujamaa on safety, constructability or the means and methods NAVARRO used to build the wall. (Exhibit 'I' at pg. 18).

Comment (c) to § 414 of the RESTATEMENT explains:

In order for the rule stated in this Section to apply, the employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work, or as to operative detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way.

Unlike *Cochran v. George Sollitt Constr. Co.*, 358 Ill. App. 3d 865, 832 N.E.2d 355 (1st Dist. 2005), *Fonseca v. Clark Construction Group, LLC*, 10 N.E.3d 374 (1st Dist. 2014), and *O'Gorman v. F.H. Paschen, S.N. Nielsen, Inc.*, 2015 WL 1281750 (Ill. App. 1 Dist. 2015), NAVARRO's claim against LORETTO is not a claim by subcontractor's employee against the general contractor, involving shared responsibility and overlapping construction agreements between the two. This is a suit by the contractor's employee directly against a hospital owner. As between LORETTO and Ujamaa, there are no overlapping agreements or shared protocols. LORETTO relied on the expertise of Ujamaa for the 5-W construction. Ujamaa was required to use its best skills to do its job. (Exhibit 'H', sub-exhibit 3, §3.3.1; Exhibit 'I', sub-exhibit 3, §3.3.1; Exhibit 'J', sub-exhibit 3, §3.3.1). Here, the relationship between LORETTO and Ujamaa never afforded LORETTO the level of control necessary under RESTATEMENT (SECOND) OF TORTS §414 (1965) to impose liability.

LORETTO HOSPITAL requests a summary judgment be entered against Count I (Construction Negligence) of Plaintiff's Complaint and in favor of Defendant, LORETTO HOSPITAL.

**B. UNDER COUNT II (PREMISES LIABILITY) OF PLAINTIFF'S COMPLAINT,
LORETTO IS ENTITLED TO SUMMARY JUDGMENT AS PLAINTIFF HAS NEITHER
ESTABLISHED A PREMISES LIABILITY DEFECT NOR LORETTO'S ACTUAL AND
CONSTRUCTIVE KNOWLEDGE OF ANY DEFECT**

Under RESTATEMENT (SECOND) OF TORTS §343 (1965), "*A possessor of land can be liable for physical harm caused to his invitees by a dangerous condition on the land if the defendant knew or should have known that the condition involved a reasonable risk of harm.*" *Recio v. GR-MHA Corp.*, 366 Ill. App. 3d 48, 851 N.E.2d 106 (1st Dist. 2006) (citing RESTATEMENT (SECOND) OF TORTS § 343 (1965)). The possessor of land, however, will not be liable where there is no evidence of such knowledge. *Joyce v. Mastri*, 371 Ill. App. 3d at 80, 861 N.E.2d at 1114 (2007); *Cochran v. George Sollitt Constr. Co.*, 358 Ill. App. 3d 865, 832

N.E.2d 355 (1st Dist. 2005).

In Count II, Par. 6, Plaintiff alleges the A-frame ladder (set-up by NAVARRO) was dangerous condition on LORETTO's property. (Exhibit 'A'). LORETTO did not supply the Ujamaa ladder. (Exhibit 'E' at pgs. 24, 80). The ladder was not in stairwell 5-W until NAVARRO set it up. (*Id.* at pgs. 80, 88, 89, 97-100; Exhibit 'F' at pgs. 13-17). NAVARRO said, there was nothing wrong with the Ujamaa ladder; there was nothing wrong with his work space. (Exhibit 'E' at pgs. 95-97, 102-103).

NAVARRO's fall relates to Ujamaa's construction activities on stairwell 5-W, not to any defective condition on LORETTO's property. The cause of NAVARRO's fall was the way NAVARRO used the Ujamaa ladder to hang drywall. This is an unsafe work practice, not a defect in LORETTO's land. When the alleged dangerous condition is some kind of tool, piece of equipment, or work practice, Illinois courts have repeatedly declined to analyze the claim under a premises liability theory. *Recio v. GR-MHA Corp.*, 366 Ill. App. 3d 48, 851 N.E.2d 106 (1st Dist. 2006); *Gregory v. Beazer East*, 384 Ill. App. 3d 178, 892 N.E.2d 563 (1st Dist. 2008); *Torres v. Gutmann Leather LLC, GRE LLC*, 2014 WL 1117049 (Ill. App. 1 Dist. 2014); *Schaefer v. Universal Scaffolding & Equip., LLC*, 2015 WL 326876 (S.D.Ill. 2015).


If the owner of the land did not create the condition on the land, the plaintiff must establish the owner had either actual or constructive knowledge of the condition. RESTATEMENT (SECOND) OF TORTS § 343 (1965). Before NAVARRO started 5-W construction, he made no complaints to anyone about his work space. (Exhibit 'E' at pgs. 98-99; Exhibit 'F' at pgs. 16-17; Exhibit 'G' at pg. 17; Exhibit 'J' at pg. 17). At the direction of Ujamaa, NAVARRO started wall framing. (Exhibit 'E' at pgs. 70, 74-75). To hang drywall, NAVARRO decided to use an Ujamaa ladder (*Id.* at pgs. 24, 89; Exhibit 'F' at pgs. 12-13; Exhibit 'G' at pgs. 16-17). From inside the hospital, no one could see NAVARRO set-up his ladder. (Exhibit 'E' at pgs. 84). No one from LORETTO told him to use a ladder, saw him set-up the ladder, was aware of any dangerous condition, or saw him fall. (Exhibit 'E' at pgs. 82, 84, 101-102; Exhibit 'F' at pgs. 9, 13, 14, 16, 17, 24; Exhibit 'G' at pgs. 13-14; Exhibit 'J' at pg. 16). This was NAVARRO's first time using a ladder near stairwell 5-W and NAVARRO said his ladder was set-up for 4 minutes. (Exhibit 'E' at pgs. 97, 99-100). *See Cochran v. George Sollitt Constr. Co.*, 358 Ill. App. 3d 865, 832 N.E.2d 355 (1st Dist. 2005) [summary judgment granted in part against subcontractor employee, where unsafe ladder set-up existed for an hour at the most].

Again, LORETTO was not responsible for NAVARRO's safety or work methods. (Exhibit 'H' at pg. 63-64, sub-exhibit 3, §3.3.1, §10.2; Exhibit 'I' at pg. 18, sub-exhibit 3, §3.3.1, §10.2; Exhibit 'J' at pgs. 16-17, sub-

exhibit 3, §3.3.1, §10.2). These were exclusively controlled by Ujamaa, both contractually and by its actions. (Exhibit 'F' at pg. 26; Exhibit 'G' at pg. 18; Exhibit 'H', at pg. 37, sub-exhibit 3, Art.10; Exhibit 'I' at pg. 18, sub-exhibit 3, Art.10; Exhibit 'J' at pg. 16, 17, sub-exhibit 3, Art.10). By job site control, Ujamaa had the responsibility to warn and inspect for any dangerous conditions and NAVARRO was at all times under Ujamaa's control. (Exhibit 'H', sub-exhibit 3, §3.3.3; Exhibit 'I', sub-exhibit 3, §3.3.3; Exhibit 'J', sub-exhibit 3, §3.3.3). NAVARRO has not offered evidence LORETTO knew or should have known of any potential hazards found in stairwell 5-W.

LORETTO HOSPITAL requests a summary judgment be entered against Count II (Premises Liability) of Plaintiff's Complaint and in favor of Defendant, LORETTO HOSPITAL.

Respectfully Submitted,

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