

TRACY M. ELLIS v. INTERNATIONAL HARVESTER COMPANY (a Delaware Corporation) NAVISTAR INTERNATIONAL TRANSPORTATION CORPORATION (a Delaware Corporation) INTERNATIONAL TRUCK AND ENGINE CORPORATION, formerly INTERNATIONAL HARVESTER COMPANY, formerly NAVISTAR INTERNATIONAL CORPORATION, formerly NAVISTAR INTERNATIONAL CORPORATION d/b/a and t/a "INTERNATIONAL" d/b/a and t/a NAVISTAR t/a and d/b/a INTERNATIONAL from NAVISTAR, KILE INTERNATIONAL TRUCKS, INC. (a Tennessee Corporation), GENERAL CAR AND TRUCK LEASING SYSTEM, INC. (an Iowa Corporation), NASHVILLE TRUCK COMPANY, INC. (a Tennessee Corporation), SOFA CONNECTION, INC. (a Tennessee Corporation)

No. 580PA04

FILED: 16 DECEMBER 2005

On discretionary review pursuant to N.C.G.S. § 7A-31 to review an order filed by the Court of Appeals on 1 November 2004 dismissing plaintiff's appeal from orders granting summary judgment entered on 21 May 2004 and 26 May 2004 by Judge E. Penn Dameron, Jr. in Superior Court, Buncombe County. Heard in the Supreme Court 14 December 2005.

*David R. Payne, P.A., by David R. Payne and Peter U. Kanipe, for plaintiff-appellant.*

*Northup & McConnell, P.L.L.C., by Elizabeth E. McConnell and Isaac N. Northup, Jr., for defendant-appellee Nashville Truck Company, Inc.*

*Ball, Barden & Bell, P.A., by Ervin L. Ball, Jr., for defendant-appellee Sofa Connection, Inc.*

PER CURIAM.

Based on our decisions in *Tinch v. Video Industrial Services, Inc.*, 347 N.C. 380, 493 S.E.2d 426 (1997) and *Pelican Watch v. United States Fire Insurance Co.*, 323 N.C. 700, 375 S.E.2d 161 (1989), the order of dismissal entered by the Court of Appeals is vacated and this case is remanded for a decision on the merits.

VACATED AND REMANDED.

