

CHAPEL HILL CINEMAS, INC., a North Carolina Corporation v.
CECIL W. ROBBINS and FAYE ELOISE ROBBINS

No. 337A01

(Filed 9 November 2001)

**Landlord and Tenant--breach of lease--increased rental costs--
mitigation of damages--jury question**

The decision of the Court of Appeals in this action by plaintiff lessee to recover damages for defendant lessor's breach of a notification of sale and right of first refusal provision of a lease is reversed for the reasons stated in the dissenting opinion in the Court of Appeals that the trial court erred in granting a directed verdict in favor of plaintiff for \$159,600 in damages for increased rental costs because the jury was entitled to determine whether plaintiff exercised reasonable diligence to mitigate its damages for increased rental payments, and that this issue was properly preserved for appellate review.

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 143 N.C. App. 571, 547 S.E.2d 462 (2001), finding no error in part and ordering a new trial in part of an order granting directed verdict and a judgment entered 26 July 1999 by Mills, J., in Superior Court, Orange County. Heard in the Supreme Court 15 October 2001.

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Reid L. Phillips and Jennifer T. Harrod, for plaintiff-appellees.

Eisele, Ashburn, Greene & Chapman, P.A., by Douglas G. Eisele; and Levine & Stewart, by John T. Stewart, for defendant-appellants.

PER CURIAM.

The decision of the Court of Appeals is reversed for the reasons stated in the dissenting opinion of Judge Tyson.

REVERSED.