

Court of Appeals of the State of Georgia

ATLANTA, JAN 3 2008

The Court of Appeals hereby passes the following order:

**A08A0348. ATLANTA BREAD COMPANY INTERNATIONAL, INC. v. SEAN
LUPTON-SMITH et al.**

The appellees in this case moved to strike the amicus brief of International Franchise Association on the grounds that (1) the central argument in the amicus brief is based on documents attached to the brief that are not part of the record, and (2) the remaining arguments in the amicus brief merely rehash and extend the arguments already advanced in the appellant's briefs, thereby circumventing the Court's page limitations and otherwise burdening the Court and the parties with an unnecessary and redundant additional brief. We agree. The amicus brief at issue attaches an affidavit and a 114 page document entitled "Non Compete Clauses of Selected Franchise Systems" that have not been certified by the trial court as part of the appellate record. Throughout the amicus brief, the International Franchise Association introduces facts and arguments concerning other franchisor's non-competition covenants that were not part of the record below and were not considered by the trial court when it rendered its decision on the summary judgment which is the basis of this appeal. Therefore, this Court cannot consider these facts and arguments.¹ The appellees' motion to strike is hereby granted.²

¹ See *Hixon v. Hickson*, 236 Ga. App. 894, 895 (1) (512 SE2d 648) (1999) (this Court cannot consider factual assertions appearing in briefs when such evidence does not appear in the record; moreover, parties cannot supplement the record merely by attaching matters to or reciting matters in their briefs).

² See *Briden v. Clement*, 283 Ga. App. 626, 629 (4) (642 SE2d 318) (2007).

The appellees' also filed a motion for leave to file a supplemental brief in response to International Franchise Association's amicus brief. Since we have granted the appellees' motion to strike this amicus brief, the motion for leave to file a supplemental brief in response to the amicus brief is hereby rendered moot.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta JAN 3 2008

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Willie Z. Mat..., Clerk.