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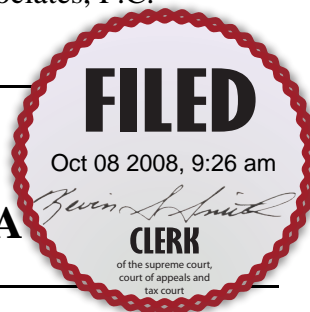
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JACK'S WHOLESALE WINDOWS AND )  
DESIGN OF HAMMOND, INC., a/k/a JACK'S )  
WHOLESALE WINDOWS and/or )  
WHOLESALE WINDOWS, )  
 )  
Appellant-Plaintiff, )

vs. )

No. 45A04-0801-CV-17

MARK FLESHER, LAKESIDE CONTRACTOR )  
SUPPLY, INC., AND JAMES FLAMINI )  
 )  
Appellees-Defendants. )

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APPEAL FROM THE LAKE CIRCUIT COURT  
The Honorable Lorenzo Arredondo, Judge  
The Honorable Christina Miller, Magistrate  
Cause No. 45C01-0405-PL-115

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October 8, 2008

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

In this interlocutory appeal, Appellant-Plaintiff Jack's Wholesale Windows and Design of Hammond, Inc. ("Jack's") challenges the trial court's denial of its motion for sanctions, to compel discovery, for issuance of contempt citation, and entry of judgment against Appellees-Defendants Mark Flesher, Lakeside Contractor Supply, Inc., and James Flamini (collectively, "Defendants"). Upon appeal, Jack's challenges the trial court's ruling on several grounds. On cross-appeal, the Defendants claim that this appeal is not properly before this court because it was not timely filed. Concluding that Jack's has waived its claims on appeal, we affirm.

### **FACTS**

On May 20, 2004, Jack's filed an action against the Defendants claiming breach of contract for former employee Flesher's alleged failure to comply with a non-compete clause contained in their employment contract. Apparently, Jack's made several discovery requests with which the Defendants allegedly failed to comply. Jack's filed a motion to compel, and, following a December 1, 2004 hearing, the trial court granted this motion by ordering the Defendants to provide complete responses to discovery requests by December 15, 2004. Following the Defendants' failure to comply with this order, on June 22, 2005, the trial court imposed sanctions against them in the amount of \$2,000. On August 2, 2005, Jack's filed a Motion for Additional Sanctions, Issuance of Contempt Citation and Entry of Judgment based upon the Defendants' alleged continuing noncompliance with discovery. Following a September 12, 2005 hearing, the trial court denied the motion for sanctions with the condition that the Defendants certify that they had produced all available documents

requested.

Due to alleged ongoing noncompliance, on November 15, 2006, Jack's filed a "2006 Motion for Sanctions, To Compel Discovery, For Issuance of Contempt Citation & Entry of Judgment." On January 24, 2007, the trial court held a hearing, and on February 19, 2007, issued an order denying Jack's motion. On June 22, 2007, Jack's filed a motion to vacate and reconsider the February 19, 2007 order, a motion to compel, and a motion to certify the order for interlocutory appeal. Following a November 16, 2007 hearing, on December 4, 2007, the trial court denied Jack's motion to vacate and reconsider, but it granted Jack's motion to certify the order for interlocutory appeal.<sup>1</sup> In addition, the trial court granted Jack's motion to compel discovery. On February 4, 2008, this court accepted jurisdiction. This appeal follows.

### **DECISION**

Our review of this appeal is fatally impeded by Jack's failure to conform to Indiana Appellate Rules 46(A)(5), (6), and 46(A)(8)(a). Jack's Statement of the Case and Statement of the Facts in its brief is a stream-of-consciousness recitation of alleged events purportedly leading to the instant appeal but unsupported by necessary citation to or documentation in the record. Much of Jack's brief is unaccompanied by record citations, and certain record citations which are included merely refer to Jack's own petitions containing similarly undocumented assertions. Further, the underlying complaint giving rise to this appeal was

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<sup>1</sup> In certifying the February 19, 2007 order for interlocutory appeal, the trial court found good cause for Jack's delayed motion, filed June 22, 2007, on the basis of counsel's delayed receipt of a transcript and his subsequent melanoma diagnosis requiring two facial reconstructive surgeries.

not included in Jack's' appendix. While it was ultimately included in the appendix submitted by the Defendants, its alleged attached exhibits were not, and this twelve-page, single-spaced, largely boldfaced document containing headings such as "Defendants' Dishonest, Deceitful Game Plan" requires reference to and clarification by the drafting party if relief is sought on the grounds that it was improperly denied. In addition, Jack's' argument, which includes citations to pages "xx," and "xxx," pages not contained in its appendix, is similarly unsupported by cogent reasoning or by citations to parts of the record relied upon. Accordingly, we deem Jack's' claims waived and therefore find it unnecessary to address the Defendants' cross-appeal.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.