

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1506

CA 10-01552

PRESENT: CENTRA, J.P., LINDLEY, SCONIERS, GREEN, AND GORSKI, JJ.

ROBERT AROESTY, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

FARASH CORPORATION, MARK ZUPAN, MARK FOERSTER
AND ERLAND E. KAILBOURNE, DEFENDANTS-RESPONDENTS.

LAW OFFICES OF JAMES MORRIS, BUFFALO (WILLARD M. POTTLE, JR., OF
COUNSEL), FOR PLAINTIFF-APPELLANT.

HARTER SECREST & EMERY LLP, ROCHESTER (F. PAUL GREENE OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Monroe County (Kenneth R. Fisher, J.), entered October 1, 2009 in an action for wrongful termination of employment. The order, among other things, denied plaintiff's motion to strike defendant Farash Corporation's counterclaims.

It is hereby ORDERED that the order so appealed from is unanimously affirmed with costs.

Memorandum: Plaintiff commenced this action alleging, *inter alia*, that he was unlawfully terminated from his employment with defendants, and defendants asserted six counterclaims in their answer, including breach of fiduciary duty and unjust enrichment. Supreme Court properly denied that part of plaintiff's motion seeking dismissal of the counterclaims pursuant to CPLR 3211 (a) (5) inasmuch as plaintiff failed to meet his initial burden of establishing that any of the counterclaims is time-barred (*see generally Morris v Gianelli*, 71 AD3d 965, 967). The court also properly denied that part of plaintiff's motion seeking dismissal of the counterclaims pursuant to CPLR 3211 (a) (7). Accepting as true the facts alleged in the counterclaims and in opposition to the motion, and according defendants the benefit of every possible favorable inference, we conclude that each counterclaim states a cause of action (*see generally CPLR 3013; Jackal Holdings, LLC v JSS Holding Corp.*, 23 AD3d 435).

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court