



## **Abuse of Process Counterclaims Survive Anti-SLAPP Motion to Dismiss**

Plaintiff America's Test Kitchen Inc. ("ATK") brought suit against Christopher Kimball ("Kimball"), William Thorndike, Jr. ("Thorndike"), and others, alleging that Kimball, who used to work for ATK, breached his fiduciary duty by developing a competing business and that Thorndike assisted him in breaching that duty. Thorndike brought counterclaims against ATK for abuse of process and violation of Chapter 93A, alleging that ATK sued Thorndike in order to harass, punish, and financially harm him for helping Kimball start a new business and in an attempt to obtain an unlawful competitive advantage against that new business.

ATK moved to dismiss the counterclaims on the basis of the anti-SLAPP statute, G.L. c. 231, § 59H and for failure to state a claim. The court denied the motion, explaining that Thorndike had adequately shown that his counterclaims were not a "SLAPP" suit because "they were not brought primarily to chill legitimate petitioning activities by ATK but instead were brought to seek damages for injury Thorndike suffered as a result of allegedly unlawful conduct by ATK." The court further stated that it was convinced that Thorndike's "primary purpose in asserting his counterclaims is to seek and obtain compensation for injuries caused by ATK's alleged abuse of process and unfair trade practices."

The court also held that, while Thorndike's allegations that ATK brought suit against him in order to harass and punish him did not suffice to state a claim for abuse of process, the allegation that ATK brought a baseless lawsuit in order to make it harder for Kimball to compete did state a viable claim. The court held that these allegations of an attempt to stifle competition also stated a claim for violation of Chapter 93A.

## About OCM

OCM is boutique litigation firm based in Burlington, Massachusetts, whose clients include Fortune 500 companies as well as closely held businesses and astute individuals. OCM's attorneys help their clients not only resolve disputes but also avoid them altogether. Whether you are facing a courtroom battle, arbitration, mediation, or negotiation, OCM can help.



[Connect with us on LinkedIn](#)



OCM Law 1 Van De Graaff Dr. Burlington, Massachusetts 01803 United States (781) 359-9000