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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CARLA DiMARE, Plaintiff, Cross-defendant and Appellant, v. JOHN TAYLOR et al., Defendants, Cross-complainants and Respondents.	B237373 (Los Angeles County Super. Ct. Nos. BC452400 and BC374997)

APPEAL from orders of the Superior Court of Los Angeles County. Deirdre Hill, Judge. Affirmed.

Carla DiMare, in pro. per.; Law Office of Lara M. Krieger, Lara M. Krieger; and Law Office of Frances L. Diaz for Plaintiff, Cross-defendant and Appellant.

Nemecek & Cole, Jonathan B. Cole, Mark Schaeffer and Tommy Q. Gallardo for Defendants, Cross-complainants and Respondents.

This appeal involves a fee dispute between two attorneys who represented a client in a wrongful death-product liability action involving a death that took place in 2006. Unfortunately, this appeal does not allow us to adjudicate with finality the division of fees between the competing attorneys because although it has been four years since the two attorneys first commenced their joint representation, their fee dispute is not yet ripe for resolution. Instead, we address warring anti-SLAPP motions filed by the two attorneys, along with related orders, leaving for another day the award to the parties of their respective shares of the proceeds from their legal work.

Carla DiMare (doing business as the Law Office of Carla DiMare) appeals from four orders: (1) granting the motion of defendants John Taylor and the law firm of Taylor & Ring, LLP to strike several causes of action from DiMare's complaint arising from a fee sharing dispute because those claims arose from Taylor's First Amendment-protected activity and therefore qualified as Strategic Litigation Against Public Participation (Code Civ. Proc., § 425.16; SLAPP)[1]; (2) denying DiMare's motion to strike the Taylor defendants' cross-complaint against her under the same provision; (3) awarding the Taylor defendants attorney fees for their successful SLAPP motion; and (4) denying her request for a preliminary injunction ordering the release to her of a share of the attorney fees. We affirm all four orders.

FACTS AND PROCEDURAL HISTORY

1. *Background Facts*

This action arises from a dispute over a fee sharing arrangement between the Law Office of Carla DiMare and John Taylor of the law firm of Taylor & Ring, LLP.[2] DiMare had a contingency fee agreement with Brenda Murillo and Murillo's three minor

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[1] All further undesignated section references are to the Code of Civil Procedure unless otherwise stated.

[2] When we refer to DiMare, we include her law firm where applicable. When we refer to Taylor, we include Taylor & Ring where applicable.

children to represent them in their wrongful death-product liability action after Murillo's husband was killed by a nail gun. In May 2009, Murillo agreed in writing to amend the fee agreement to allow DiMare to hire additional counsel, with such counsel to be paid by DiMare out of her contingency fee.

In July 2009, Taylor and DiMare signed a fee sharing agreement that said any attorney fees recovered in the Murillo action would be split 50-50 if the case settled "up through and including the first mediation." Taylor would receive 60 percent of the fees recovered after the first mediation, up to and including trial. Murillo consented to and signed the fee sharing agreement, pursuant to California Rules of Professional Conduct, rule 2-200. The case settled for $5 million in July 2010 after two mediation sessions.

On October 21, 2010, Murillo fired Taylor. Murillo and DiMare contended Taylor was falsely claiming reimbursement for nearly $60,000 in costs and had delayed filing a petition to compromise the children's claims (Prob. Code, § 3601) – which was a prerequisite to disbursement of the settlement proceeds – because he concealed that he had been busy working on other matters since July.[3] Taylor claims that the costs statement was the result of a clerical error that he quickly corrected, that he had no inkling Murillo was dissatisfied with his representation of her, and that DiMare engineered his termination after he rejected DiMare's demand that she receive half of the attorney fees, even though she was entitled to only 40 percent because the case settled after the first mediation.[4]

Setting aside the factual clutter, what happened next can be briefly summarized. Although Taylor was no longer representing the Murillos, he filed a notice of lien and an application to be awarded 60 percent of the money available for attorney fees in

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[3] As part of approving the compromise or settlement of a minor's action, the court must make an order authorizing and directing the payment of reasonable expenses, costs, and attorney fees. (Prob. Code, § 3601, subd. (a).)

[4] We express no opinion on these contradictory assertions, they play no part in our analysis, and we recount them in as little detail as possible solely for context.

connection with the petition to compromise the children's claims that DiMare eventually filed. This spawned a protracted law and motion battle over where to deposit the settlement check, the type of account, who should control it, and whether any or all of the attorney fees should be paid out in the interim.

The Taylor-DiMare fee dispute became even more complicated when DiMare sued Taylor on January 4, 2011, in a complaint that contained seven causes of action: declaratory relief over the right to fees under the fee sharing agreement; constructive trust; interference with prospective economic advantage; unfair business practices; conversion; intentional infliction of emotional distress; and "punitive damages." On January 7, 2011, the Murillos received their share of the settlement proceeds and the rest, which represented the amount available for attorney fees, remained in dispute as between DiMare and Taylor.[5] The Murillo action was then dismissed, although the petition to compromise the minors' claims in that case remained for adjudication.

2. *DiMare's Complaint*

DiMare's complaint against Taylor begins with a lengthy list of alleged ethical violations, incompetence, and misconduct by Taylor in order to explain both why Murillo fired Taylor and why Taylor is not entitled to anything other than the reasonable value of the legal services he provided. When the complaint begins to focus on the alleged misconduct that justified the various causes of action, most of the allegations are based on Taylor's attempts to assert his rights under the fee sharing agreement by way of pleadings and communications with the court as part of the petition to compromise the claims of the three Murillo children. In paragraph 78, DiMare alleges that "[o]n November 2, 2010, at a hearing on the Minors' Petitions filed by [DiMare], Taylor incontrovertibly interfered with and delayed the underlying lawsuit for his own gain." In

[5] After much squabbling over the matter, in October 2011 the defendant in the Murillo action issued a new check in the amount remaining for attorney fees and deposited that check with the superior court in an interest-bearing account.

the next paragraph, she alleges that "[d]ue to Taylor's wrongful interference at the November 2 hearing, [she] had to then file amended proposed Orders on the Minors' Petitions, which further delayed" recovery of the settlement funds and attorney fees. Paragraph 80 alleges Taylor again tried to delay matters at a November 16 hearing on the minors' petitions. Paragraph 81 alleges Taylor delayed matters for his own gain in three ways: (1) by not working on the minors' petitions for more than three months after the settlement was reached; (2) by "improperly intervening" and demanding 60 percent of the attorney fees at the November 2 and 16 hearings; and (3) by refusing to endorse the settlement check. Paragraph 87 alleges that on November 1, Taylor filed a "false notice of lien" in the Murillo action. DiMare next alleges Taylor had no contractual arrangement with the Murillos, or other legal right, that allowed him to assert a lien on the settlement funds. The complaint then alleges Taylor's refusal to endorse the settlement check or agree to their deposit in accounts suitable to DiMare.

DiMare's legal causes of action incorporate these factual allegations. Her declaratory relief claim alleges that Taylor was entitled to only the reasonable value of his services, if any. The second cause of action alleges that Taylor was wrongfully tying up the attorney fees money, some or all of which belonged to DiMare, warranting the imposition of a constructive trust over those funds. The third cause of action alleged that Taylor's conduct was interfering with DiMare's prospective economic advantage arising from her contingency fee agreement with the Murillos. Her fourth cause of action claimed that Taylor's multiple alleged ethical violations amounted to unfair business practices, in violation of Business and Professions Code section 17200. Her fifth cause of action alleged that Taylor had converted her money. Her sixth cause of action alleged that Taylor's conduct constituted intentional infliction of emotional distress. Her seventh cause of action, captioned as one for punitive damages, alleged that Taylor's asserted misconduct and violations of law were malicious and deliberate, entitling her to punitive damages.

3. *Taylor's Cross-complaint*

Taylor's cross-complaint alleged, and incorporated as exhibits, DiMare's original and amended contingency fee agreements with the Murillos and the fee sharing agreement with DiMare. He alleged that he negotiated a settlement after two mediation sessions, that a little more than $1.9 million of that remained to cover the attorney contingency fee, that he was entitled to 60 percent of that amount under the fee sharing agreement, and that DiMare refused to pay him that amount. Based on those allegations, Taylor stated causes of action for declaratory relief, breach of contract, and two common counts. No mention was made of any litigation conduct by DiMare as a source of her alleged breach of contract.

4. *SLAPP Proceedings and Other Related Motions*

On February 28, 2011, Taylor filed a motion to strike all but DiMare's declaratory relief cause of action from her complaint, contending that the other causes of action arose from Taylor's First Amendment-protected litigation activity and therefore qualified under section 425.16 as a SLAPP.

During the next several months, the law and motion battlefront shifted back and forth between the fee sharing dispute that remained from the Murillo action and DiMare's action against Taylor, including motions by both parties to release some portion of the attorney fees to themselves. DiMare also challenged some of the judges assigned to the actions, and the matter was passed around until it eventually landed with Judge Deidre Hill in August 2011, who ruled that the petition to compromise the minors' claims that remained from the Murillo action was legally related to the DiMare action against Taylor.

On November 9, 2011, the trial court granted Taylor's SLAPP motion and denied a motion by DiMare seeking a preliminary injunction that would have ordered Taylor to endorse the check for attorney fees in a certain type of account and to release 40 percent of that sum to her. Taylor then cross-complained against DiMare, stating causes of action for declaratory relief, breach of contract, and two common counts.

In January 2012, DiMare countered with her own SLAPP motion, contending that if her complaint against Taylor arose from protected activity, then by parity of reasoning the same must be true as to his cross-complaint. Taylor filed separate motions to recover his attorney fees in connection with his SLAPP motion against DiMare's complaint and for defending his cross-complaint against DiMare's SLAPP motion. On March 1, 2012, the trial court denied DiMare's SLAPP motion and granted Taylor's motion seeking slightly more than $106,000 for successfully *bringing* his SLAPP motion against most of DiMare's complaint. In July 2012, the trial court granted Taylor's motion for attorney fees for successfully *opposing* DiMare's SLAPP motion against his cross-complaint, awarding him nearly $49,000.

5. *Appellate Proceedings and DiMare's Attempt to Raise Issues That Were Not Properly Appealed*

DiMare filed a notice of appeal on November 15, 2011, from the orders of November 9, 2011 (B237373), which includes the orders granting Taylor's SLAPP motion and denying her motion for a preliminary injunction. On April 18, 2012, DiMare filed another notice of appeal from the March 1, 2012 orders, which would include the denial of her SLAPP motion and the order awarding Taylor fees for having brought his SLAPP motion (B240649). Those appeals were consolidated for all purposes as B237373.

At the conclusion of DiMare's opening appellate brief, she asks us to reverse several other orders that are not properly before us. These are: a March 30, 2011 order she contends improperly "reopened" the Murillo action, reversed a previous order finding that her action and the Murillo action were unrelated, and taking jurisdiction over Taylor's request for a 60 percent share of the fees; an October 7, 2011 order denying DiMare's motion to reconsider the March 30 order; a motion to strike Taylor's lien; and an order that DiMare lacks standing to assert Taylor's alleged ethical violations.

Taylor has asked us to strike those portions of DiMare's brief because they relate to orders that are either nonappealable or that were not appealed. He has also asked us to

strike from the record certain documents relating to those orders. DiMare contends her appeal from the March and October 2011 orders is proper because her notice of appeal of November 15, 2011, stated that she appealed from the orders of November 9, 2011, and all orders upon which they were based, and then attached copies of those orders to her notice of appeal.

We reject her contention that her November 15, 2011 notice of appeal was sufficient to perfect appeals from anything other than the November 9, 2011 orders granting Taylor's SLAPP motion and denying her motion for injunctive relief. The November 2011 notice of appeal stated that she appealed from the November 9 orders and "any rulings upon which it is based, including Oct. 7, 2011." Although the other orders were attached to DiMare's later-filed case information statement, they were not included with the notice of appeal. Setting aside whether any of the additional orders she wants us to reverse were either appealable at all, and, if so, were timely appealed, her oblique reference to any rulings upon which the November 9 orders were based was insufficient to invoke the jurisdiction of this court. (*Kronsberg v. Milton J. Wershow Co.* (1965) 238 Cal.App.2d 170, 172, fn. 1.)

We therefore limit our discussion and holdings to only those properly appealed orders that are before us. As a result, we deem it unnecessary to grant Taylor's motion to strike references to the nonappealable orders from DiMare's appellate brief and strike from the record documents related to those orders.

The same is true as to any appellate challenge by DiMare to the July 2012 order awarding Taylor attorney fees for successfully opposing DiMare's SLAPP motion. Taylor was awarded those fees in July 2012, well after the notices of appeal in these consolidated appeals, and that order is the subject of a separate appeal (B244264). At oral argument of this matter, DiMare argued that we should at least consider the trial court's finding that her SLAPP motion was frivolous because that issue was decided at the March 1, 2012 hearing. Our review of the record shows otherwise.

Although counsel for Taylor said during the March 1 hearing that the trial court had tentatively found that DiMare's SLAPP motion was frivolous, the trial court itself

said no such thing during that hearing, and the issue is not mentioned in either its tentative ruling or minute order from that date. However, the minute order from the July 30, 2012 hearing where the trial court heard argument on Taylor's motion to recover his attorney fees for successfully opposing DiMare's SLAPP motion states it was taking under submission Taylor's motion "for an Order Finding Cross-Defendant's [SLAPP] motion Frivolous and For Award of Attorney's Fees and Costs . . . ." In short, all issues related to the propriety of the trial court's order awarding Taylor attorney fees for having successfully opposed DiMare's SLAPP motion are part of DiMare's separate appeal, and that is where we will resolve them.

To summarize, we address the following orders only: (1) the order granting Taylor's SLAPP motion; (2) the order denying DiMare's SLAPP motion; (3) the order granting Taylor attorney fees for having successfully brought his SLAPP motion; and (4) the order denying DiMare's motion for a preliminary injunction ordering the release to her of 40 percent of the attorney fees.[6]

DISCUSSION

1. *The SLAPP Statute and Standard of Review*

Section 425.16 was enacted to address a sharp rise in the number of lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition, and for the redress of grievances. (§ 425.16, subd. (a).) The statute provides that a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

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[6] DiMare has asked us to augment the record to include an e-mail from Taylor that was not presented to the trial court. We therefore deny that motion.

The trial court undertakes a two-step process when considering a defendant's SLAPP motion. First, the trial court determines whether the defendant has shown the challenged cause of action arises from protected activity. The trial court reviews the pleadings, declarations, and other supporting documents to determine what conduct is actually being challenged, not whether that conduct is actionable. The defendant does not have to show the challenged conduct is protected as a matter of law; only a prima facie showing is required. (*People ex rel. Fire Ins. Exchange v. Anapol* (2012) 211 Cal.App.4th 809, 822.) If the defendant shows the challenged conduct was taken in furtherance of his First Amendment rights of free speech, petition, and to seek redress of grievances, the trial court must then determine whether the plaintiff has shown a probability of prevailing on the claim. (*Ibid.*)

We review the trial court's ruling on a SLAPP motion independently, engaging in the same two-step process. (*Cabral v. Martins* (2009) 177 Cal.App.4th 471, 478.) We do not weigh credibility or the weight of the evidence. Instead, we accept as true the evidence favorable to the plaintiff and evaluate the defendant's evidence only to determine if it has defeated plaintiff's evidence as a matter of law. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3.)

2. *DiMare's Challenged Causes of Action Were Properly Dismissed*

A. The Nondeclaratory Relief Causes of Action Arose From Protected Activity

The SLAPP statute defines acts in furtherance of First Amendment free speech and petition rights to include: any written or oral statement or writing made before a legislative, executive, or judicial proceeding (§ 425.16, subd. (e)(1)); and any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body (§ 425.16, subd. (e)(2)). The right to petition generally involves pursuing a remedy afforded by a branch of government and includes filing a lawsuit, seeking administrative action, and lobbying or testifying before a

legislative or executive body. (*Garretson v. Post* (2007) 156 Cal.App.4th 1508, 1523-1524.)

As Taylor concedes, he did not move to strike DiMare's declaratory relief cause of action because that was based on a contract enforcement dispute that did not involve protected activity under SLAPP. In contrast, the tort causes of action that were stricken from DiMare's complaint are based on Taylor's conduct in connection with litigating the petition to compromise the Murillo children's claims – filing a notice of lien, filing pleadings seeking distribution of attorney fees pursuant to the fee sharing agreement, and engaging in various communicative acts with the court about those matters. For that reason, Taylor contends those claims did arise from his protected litigation activity. We agree.

DiMare cites several decisions for the proposition that SLAPP does not apply to her claims because any litigation activity by Taylor was merely incidental to the conduct that gave rise to her claims – his interference with her ability to get paid from the Murillo settlement proceeds. Most of these decisions concern actions against lawyers for either malpractice or for breaches of fiduciary duties, where the lawyer's representation of the client-plaintiff in litigated matters was deemed incidental to the gravamen of the actions against the lawyers. (*Coretronic Corp. v. Cozen O'Connor* (2011) 192 Cal.App.4th 1381 [client sued lawyer for fraud, conspiracy, and related claims arising from lawyer's dual representation of party with adverse interests]; *Hylton v. Frank E. Rogozienski, Inc.* (2009) 177 Cal.App.4th 1264 [client sued lawyer for breach of fiduciary duty based on false advice that induced client to pay exorbitant fee]; *Freeman v. Schack* (2007) 154 Cal.App.4th 719 [breach of contract and breach of fiduciary duty action by clients against lawyer who abandoned them in order to represent adverse interests in same litigation]; *Kolar v. Donahue, McIntosh & Hammerton* (2006) 145 Cal.App.4th 1532 [garden variety malpractice action for mishandling litigation]; *Benasra v. Mitchell Silberberg & Knupp LLP* (2004) 123 Cal.App.4th 1179 [breach of fiduciary duty action against lawyer for representing parties with conflicting interests]; *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624 [legal malpractice claim].)

The court in *Fremont Reorganizing Corp. v. Faigin* (2011) 198 Cal.App.4th 1153 distinguished several of these decisions in a case where an employer being sued for wrongful termination by its former in-house counsel cross-complained against the lawyer for breach of fiduciary duty based on allegations that the former employee falsely reported to the state insurance commissioner that the company was about to auction artwork owned by another entity. On appeal from an order dismissing the cross-complaint under the SLAPP statute, the appellate court reversed as to the breach of fiduciary duty claims because, unlike decisions such as those cited here by DiMare, those claims were based on the lawyer's communications with the insurance commissioner, conduct that was both protected under SLAPP and not incidental to the causes of action. (*Id.* at pp. 1170-1171.)

DiMare's allegations against Taylor fall into this category. As set forth in our Facts and Procedural History, above, DiMare alleged Taylor interfered with her right to recover her attorney fees by filing a false notice of lien in the Murillo action, by his conduct in connection with two court hearings in November 2010, and by otherwise improperly intervening in her attempts to have the court rule on the petition to compromise the Murillo minors' claims and allocate the fees and costs.

The litigation privilege (Civ. Code, § 47, subd. (b)) is nearly coextensive with the parameters of protected activity under the SLAPP statute, and cases involving that privilege inform our interpretation of the SLAPP provision. (*Gallanis-Politis v. Medina* (2007) 152 Cal.App.4th 600, 617 & fn. 14.) The litigation privilege has been extended to various liens, including a lis pendens, an assessment lien, and a mechanic's lien. (*Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 831; see *Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2006) 136 Cal.App.4th 464, 477 [the act of filing medical services lien claims in a workers' compensation case is protected litigation activity under the SLAPP statute].) We see no reason why that rationale does not extend to attorney liens as well. As we discuss in part 2.B., *post*, litigating one's position in connection with a motion pending before a court clearly constitutes litigation activity that is protected by the litigation privilege. We therefore

conclude DiMare's several tort causes of action arose from Taylor's protected litigation activity.

DiMare makes several other arguments to support her contention that her complaint did not arise from Taylor's protected litigation activity: (1) the trial court lacked jurisdiction to resolve the fee dispute, requiring her to bring a separate action; (2) only those proceedings "authorized by law" are protected by the SLAPP statute, and Taylor's conduct was unauthorized because his conduct was unethical and he had no right to a lien; (3) the trial court should have been disqualified for receiving campaign donations from Taylor and by making comments reflecting bias; (4) when she sued Taylor in January 2011, nothing was under consideration by a court; (5) she was complying with her ethical responsibilities by filing suit; (6) Taylor's motion was heard more than 30 days after the complaint was filed, in violation of the SLAPP statute; and (7) the trial court ruled based on her original complaint instead of the amended complaint she later filed. We take each contention in turn.

As to the first, she cites older authority (*Law Offices of Stanley J. Bell v. Shine, Browne & Diamond* (1995) 36 Cal.App.4th 1011; *Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378) to support her claim that she was required to file her separate action because the trial court lacked jurisdiction to resolve her fee dispute with Taylor. More recent decisions (*Padilla v. McClellan* (2001) 93 Cal.App.4th 1100 (*Padilla*); *Curtis v. Estate of Fagan* (2000) 82 Cal.App.4th 270 (*Curtis*)) disagree and have concluded that under Probate Code section 3601, the trial court hearing a petition to compromise a minor's claim is entitled to resolve a fee dispute between lawyers and allocate the amount of fees.[7]

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[7] DiMare contends that *Padilla* and *Curtis* are inapplicable because in each case, the lawyer who intervened to seek his fees had been hired, then fired, by the client, and proceeded pursuant to a fee agreement with the client, while in this case, Taylor had never been hired by the Murillos and had no agreement with them. The *Curtis* court acknowledged these differing situations, but said that in such a case, the lawyer seeking his fees "may have an independent cause of action" if he had an agreement with his successor counsel. (*Curtis, supra,* 82 Cal.App.4th at pp. 279-280, fn. 10.) As we read it,

Her second contention is based on a misreading of the statute, which states that acts in furtherance of protected activity include written or oral statements or writings made before or in connection with an issue under review "by a legislative, executive, or judicial body, *or any other proceeding authorized by law* . . . ." (§ 425.16, subd. (e)(1) & (2), italics added.) DiMare apparently reads this language to mean that a proceeding before a judicial body is not authorized by law if the person taking part in that proceeding cannot prevail on the merits, in this case because Taylor's conduct was allegedly unethical and he had no right to a lien on the fees. Even if she is correct about Taylor's conduct, this argument relates to the second prong of the SLAPP motion analysis – whether a plaintiff suing over protected activity can show a probability of prevailing on the merits.[8] (*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 305.)

As best we understand it, DiMare's third contention seems to be that the trial court lacked jurisdiction to even rule on the competing SLAPP motions because of conflicts of interest arising from having attempted to mediate the fee dispute and from receiving campaign donations from the Taylor law firm. The argument in DiMare's opening

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the *Curtis* court believed that an independent cause of action might also exist, but did not strip a trial court of jurisdiction to resolve such a fee dispute when deciding a minor's petition to compromise. Regardless, the Murillos' amended fee agreement stated they agreed to allow DiMare to hire other counsel and have that additional counsel paid from any recovery, and the Murillos also signed and consented to the DiMare-Taylor fee sharing agreement.

[8] Although we express no opinion on the merits, we note there is some authority contrary to that cited by DiMare. For instance, when a lawyer being sued for protected activity brings a SLAPP motion, the lawyer does not lose his coverage from that statute based on allegations of unethical conduct. That happens only when the alleged ethical violations are undisputed as a matter of law or were conceded by the lawyer-defendant. (*Cabral v. Martins, supra,* 177 Cal.App.4th at p. 482.) Even though a direct contractual relationship between lawyer and client is required in order to assert a lien against settlement proceeds (*Carroll v. Interstate Brands Corp.* (2002) 99 Cal.App.4th 1168, 1172), it is arguable that Murillo's written consent to the fee sharing agreement created a contractual relationship with Taylor sufficient to justify his assertion of a lien on the settlement proceeds. It is also arguable that Taylor could still assert an equitable lien based on that agreement. (*County of Los Angeles v. Construction Laborers Trust Funds for Southern California Admin. Co.* (2006) 137 Cal.App.4th 410, 414-415.)

appellate brief refers to factual assertions in her statement of facts, but each assertion concerns the period before Judge Hill was assigned to this case. For that reason alone, we deem the issue waived.

The fourth contention – that there was nothing under consideration by a court immediately before she sued Taylor – is patently wrong. She had filed the minors' petition to compromise and Taylor had filed his notice of lien and application to be awarded fees, conduct which formed the basis of her complaint.

The fifth contention – that she was complying with her ethical responsibilities by suing Taylor – has no bearing on the issue of whether her complaint was subject to a motion to strike under the SLAPP statute.

The sixth contention – that the SLAPP motion was procedurally defective because it was not heard within 30 days after it was filed – is rejected for two reasons. First, the provision states the motion shall be scheduled "by the clerk" for a hearing within 30 days after filing "unless the docket conditions of the court require a later hearing." (§ 425.16, subd. (f).) Setting aside the issue whether Taylor had any responsibility for ensuring the clerk timely calendared a hearing on his SLAPP motion, DiMare does not address or acknowledge that a hearing on this matter was delayed for several months in part because she challenged some of the judges assigned to hear the matter. We therefore deem the issue waived. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.) Furthermore, DiMare does not contend that she ever objected to the delayed hearing. As a result, any objections to this supposed procedural defect were waived. (*Wiley v. Southern Pacific Transportation Co.* (1990) 220 Cal.App.3d 177, 187-188.)

DiMare's final contention is that instead of deciding the motion based on her original complaint, the trial court should have based its ruling on her amended complaint against Taylor, which was filed nearly three months after Taylor filed his SLAPP motion. The law in this area appears uncertain. Some decisions state an amended complaint filed after a SLAPP motion is filed need not be considered. (*Digerati Holdings, LLC v. Young Money Entertainment, LLC* (2011) 194 Cal.App.4th 873, 880, fn. 2.) Others seem to hold only that a complaint cannot be amended after a trial court grants a defendant's SLAPP

motion. (*Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 628.) We need not resolve that issue, however. DiMare does not contend how her amended complaint differed or explain how the trial court's failure to consider those differences constituted error. Nor does she contend that she raised this issue with the trial court. Therefore, we alternatively hold that the issue was waived. (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, ___ [155 Cal.Rptr.3d 892, 914] [appellant has burden to affirmatively demonstrate trial court error through meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error].)

B. DiMare Cannot Prevail on the Merits

After determining Taylor satisfied the first SLAPP motion prong by showing DiMare's claims arose from protected activity, the trial court found DiMare did not carry her burden of showing a probability of prevailing on the merits of her claims because each was barred by the litigation privilege. We agree.

The litigation privilege is codified in Civil Code section 47, which provides, as relevant here, that a publication or broadcast made in any judicial proceeding by litigants or other authorized participants is privileged. (§ 47, subd. (b).) The privilege applies to any communication and to all torts except malicious prosecution. (*Gallanis-Politis v. Medina, supra,* 152 Cal.App.4th at p. 615.) It extends to any publication required or permitted by law in the course of a judicial proceeding to achieve the objects of the litigation, even if the publication occurs outside the courtroom in the absence of a court function or the court's officers. It also extends to steps taken before or after a judicial proceeding. (*Id.* at p. 616.) The privilege also applies to noncommunicative acts that are necessarily related to privileged communicative conduct. (*Ibid.*)

The litigation privilege applies to motions filed by persons seeking relief from a court or making applications for judicial orders, including motions for attorney fees. (*Ramona Unified School Dist. v. Tsiknas* (2005) 135 Cal.App.4th 510, 522 & fn. 7 [motion for statutory private attorney general fees].)

Applying these principles here, we conclude DiMare's claims were barred by the litigation privilege.[9] As discussed previously, her causes of action arise from Taylor's conduct in filing a notice of lien and petitioning the court to award him 60 percent of attorney fees. His noncommunicative acts refusing to endorse the settlement check were necessarily related to his privileged communications.

DiMare contends the litigation privilege does not apply here, but none of her contentions is well taken. Distilled, she argues Taylor cannot take advantage of the litigation privilege because he had no right to take part in the Murillo action from that point on, his actions had no connection to the Murillo case at that point, and he had no right to recover 60 percent of the attorney fees because his actions were unlawful and unethical. In essence, she contends Taylor's conduct was not privileged because his claims were without merit and procedurally improper. Accepting DiMare's interpretation of the litigation privilege would swallow it whole. The privilege applies regardless of the merits of the claims brought in court (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1489) and regardless of whether the person bringing those claims lacked standing to do so. (*Obos v. Scripps Psychological Associates, Inc.* (1997) 59 Cal.App.4th 103, 108.) Because the claims against Taylor are based on his participation in judicial proceedings, we conclude those claims are barred by the litigation privilege.[10]

3. *Taylor's Cross-complaint Did Not Arise From Protected Activity Under the SLAPP Statute*

DiMare contends that if her complaint against Taylor over their fee dispute arose from protected activity that justified a SLAPP dismissal of most of her claims, then the

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[9] Of course, DiMare's declaratory relief claim was not the subject of the SLAPP motion, leaving for resolution the proper allocation of the attorney fees.

[10] As a result, we need not reach the trial court's alternative basis for finding that DiMare did not establish a reasonable probability of prevailing on her claims: that each suffered from various pleading or evidentiary defects that made the causes of action unsustainable.

same must be true as to Taylor's cross-complaint. A contrary ruling leads to inconsistent outcomes, she contends, such that we must reverse the order denying her SLAPP motion to Taylor's cross-complaint if we affirm the order granting his SLAPP motion to her complaint.

There is a surface logic to her position, but no more. DiMare's complaint alleged numerous instances of litigation-related conduct by Taylor by way of his notice of lien and participation in the hearings on the Murillo minors' petition to compromise their claims. Taylor's cross-complaint mentioned no litigation conduct by DiMare. Instead, it alleged she refused to pay him 60 percent of the attorney fees recovered in the Murillo action, thereby breaching their contract. Based on those allegations, Taylor seeks declaratory relief, breach of contract damages, or common count remedies. DiMare contends she is entitled to SLAPP protections because Taylor's cross-complaint arose in the context of her legal representation of the Murillos.

That is not the test, however. It is not enough that an action may have been triggered by protected activity, or that such activity is evidence of liability. When a claim is essentially one to determine the parties' rights and obligations under a contract, a SLAPP motion will not lie. (*City of Alhambra v. D'Ausilio* (2011) 193 Cal.App.4th 1301, 1307-1309 [declaratory relief action arising from asserted breach of settlement agreement]; *Applied Business Software, Inc. v. Pacific Mortgage Exchange, Inc.* (2008) 164 Cal.App.4th 1108, 1118.)

With this in mind, we see no inconsistency between the two SLAPP rulings. Taylor's SLAPP motion was expressly not aimed at DiMare's declaratory relief cause of action to determine the parties' rights under their fee sharing agreement, a cause of action that did not challenge protected activity. Taylor's cross-complaint really seeks the same relief as DiMare's remaining claim: to determine their rights to recover fees under their fee sharing agreement. Because DiMare did not establish the first prong of the SLAPP analysis – that the claims arose from protected activity – the trial court did not err by granting Taylor's motion.

4. *Attorney Fees to Taylor for Defending DiMare's SLAPP Motion*

DiMare contends we should reverse the order granting Taylor more than $106,000 in attorney fees for bringing his SLAPP motion because the hourly rates charged were too high, and because the number of hours claimed were excessive on their face and included work for time spent on matters other than that motion.

A defendant who brings a successful SLAPP motion is entitled to recover its attorney fees and costs in connection with the motion, not the entire action. (§ 425.16, subd. (c)(1); *City of Industry v. City of Fillmore* (2011) 198 Cal.App.4th 191, 218.) The fees awarded should include services for all proceedings initiated by the party opposing the SLAPP motion, and the statute is broadly construed to carry out the legislative purpose of reimbursing the prevailing defendant for expenses incurred in defeating a baseless lawsuit. (*Jackson v. Yarbray* (2009) 179 Cal.App.4th 75, 92-93.) The trial court exercises its discretion to determine the amount of fees and costs to award in light of the defendant's relative success in achieving its litigation objectives. (*City of Industry*, at p. 218.) We review the trial court's ruling under the abuse of discretion standard and will not reverse unless it is manifestly excessive under the circumstances. (*Mallard v. Progressive Choice Ins. Co.* (2010) 188 Cal.App.4th 531, 544-545.)

In accord with the legal principles stated above, the trial court ruled Taylor was entitled to recover fees and costs incurred in connection with his successful SLAPP motion. The trial court found the hourly rates charged ($415 for a lawyer with 35 years experience, $385 for lawyers with 25 and 12 years of experience, $300 for a lawyer with two years of experience, and $135 for a paralegal with 20 years of experience) were reasonable. It also found the number of hours claimed (233.5) were incurred in connection with the motion to strike and were reasonable, especially given the need to respond to DiMare's tenacious litigation tactics.

We see no basis for upending the trial court's finding that the hourly rates charged were reasonable. As for DiMare's contention that fees were improperly awarded for time spent on matters that were not properly connected to the SLAPP motion, her opening

appellate brief does not specify any billing entries she contends are unnecessary or unconnected to the SLAPP motion. Nor does it state where any such billing entries can be found in the record. Instead, DiMare does no more than offer general characterizations of categories of billing entries supported by citation to her declaration in opposition to Taylor's attorney fees motion. That declaration suffers from the same defect – it merely characterizes categories of charges without citation to any specific ones included in the fees motion. As a result, we deem the issue waived. (*Inyo Citizens for Better Planning v. Inyo County Bd. of Supervisors* (2009) 180 Cal.App.4th 1, 14 [appellate court not obligated to search the record to see if it contains support for appellant's assertions].)

Although DiMare does mention some specific billing entries in her appellate reply brief, we may still treat the issue as waived because those entries were not addressed until that time. (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 219, fn. 4.) We alternatively hold on the merits that DiMare has failed to carry her burden of demonstrating error.

In her appellate reply brief, DiMare cites to several pages from the billing summary submitted by Taylor in support of its attorney fees motion. From within this group of pages, she refers to portions of billing entries such as "recusal," "research re case assignment to [Judge] Hill," "coordination of . . . dates," "binders of motions on calendar," "prepare for hearing on . . . injunction," and "communications with outside counsel." Setting aside DiMare's failure to more fully specify the billing entries she is challenging, she fails to mention that virtually every entry on the pages she cites, when read in full, refers to the SLAPP motion. As for the few that do not specifically do so, the supporting declaration that accompanied the billing summary said that all of the tasks listed in the summary were performed in connection with the SLAPP motion and that most of those were "reactions to Ms. DiMare's acts, communications, and pleadings in connection with" that motion.

DiMare does not discuss this declaration or contend the trial court was not free to rely on it when making its factual findings. Her failure to do so not only waives the

issue, it leads us to conclude there was evidentiary support for those findings and no abuse of discretion occurred.

5. *No Error in Denying Request for Injunction to Release Some of the Fees*

A few weeks before Taylor filed his SLAPP motion, DiMare filed a motion seeking a preliminary injunction that would order Taylor to deposit the settlement check into a certain type of account and release 40 percent of the amount available for attorney fees to her. That motion was heard and denied at the same hearing where the trial court granted Taylor's SLAPP motion. DiMare contends the trial court abused its discretion by denying the injunction because her right to 40 percent of the fees is undisputed and conceded by Taylor, who could recover no more than 60 percent under either their fee sharing agreement or a quantum meruit theory.

In deciding whether to issue a preliminary injunction, the trial court considered two factors: (1) the likelihood that the plaintiff will prevail on the merits at trial; and (2) the interim harm the plaintiff is likely to suffer if the injunction is denied as compared to the harm the defendant will likely suffer if the injunction is granted. The second factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the need to preserve the status quo. (*14859 Moorpark Homeowner's Assn. v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1402.) After deeming DiMare's motion as one seeking a mandatory injunction, the trial court denied her request for a preliminary injunction because money damages were sufficient and she had not shown irreparable injury. We review the trial court's order for an abuse of discretion. (*Ibid.*)

On appeal, DiMare devotes little time to this issue, contending only that she is forced to wait for her money while her dispute with Taylor proceeds to trial, and that her right to at least 40 percent of the funds is undisputed. Because the funds have been deposited with the court and are on hand to satisfy any judgment in favor of DiMare, she has an adequate remedy at law. As a result, there was no irreparable harm for purposes of granting a preliminary injunction. (*Abrams v. St. John's Hospital & Health Center*

(1994) 25 Cal.App.4th 628, 639, fn. 2; *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 889-890.)

DiMare also contends injunctive relief should have been granted to prevent future ethical violations by Taylor. (*People ex rel. Herrera v. Stender* (2012) 212 Cal.App.4th 614, 630-631 [injunctive relief proper only when there is a threat of continued wrongful conduct].) Accepting for discussion's sake only that any ethical violations occurred, there is no showing of the likelihood of further conduct. The disputed funds are in the control of the trial court and DiMare's allegations will be resolved at trial.

DISPOSITION

The orders granting Taylor's SLAPP motion, awarding him attorney fees in connection with that motion, and denying DiMare's SLAPP motion and request for a preliminary injunction ordering the release of 40 percent of the attorney fees, are affirmed. Taylor shall recover his costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.