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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

JULIE C. LIM et al., Cross-complainants and Appellants, v. ROBERT SCOTT SHTOFMAN, Cross-defendant and Respondent.	B284694 (Los Angeles County Super. Ct. No. BC611057)

APPEAL from an order of the Superior Court of Los Angeles County, David Sotelo, Judge. Affirmed.

Julie C. Lim, in pro. per., and for Cross-complainant and Appellant Gloria Lopez.

Robert Scott Shtofman, in pro. per.; Law Offices of Richard M. Chaskin and Richard M. Chaskin for Cross-defendant and Respondent.

Cross-complainants and appellants Julie C. Lim (Lim) and Gloria Lopez (Lopez) appeal an order granting a special motion to strike, or anti-SLAPP motion, filed by cross-defendant and respondent Robert Scott Shtofman (Shtofman). (Code Civ. Proc., § 425.16.)[1]

We conclude the trial court properly found that the entire cross-complaint by Lim and Lopez arose out of Shtofman's protected activity, so as to subject the cross-complaint to anti-SLAPP scrutiny, and that on the second prong of the anti-SLAPP analysis, Lim and Lopez failed to establish a likelihood of prevailing on any of their claims. Therefore, the order granting the special motion to strike is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The relevant pleadings*.

a. *Shtofman's lawsuit*.

Attorney Shtofman filed a complaint against various defendants, including Lim, Lopez, and Arch Insurance Group, Inc. (Arch), seeking to recover legal fees that he allegedly earned representing Lopez in a tort action. In the operative second amended complaint, Shtofman alleged in pertinent part:

In July 2013, Lopez retained attorneys Shtofman and Lim to represent her in connection with an action to recover for

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[1] SLAPP is an acronym for " 'strategic lawsuit against public participation.' " (*Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 732, fn. 1.) The order granting the anti-SLAPP motion is appealable. (Code Civ. Proc., § 425.16, subd. (*i*), § 904.1, subd. (a)(13).)

All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

personal injuries she suffered in an auto-pedestrian accident (the *Lopez* action) involving Carlos Orozco (Orozco), Jin Seok Choi (Choi), Yun Hee Choi Yun (Yun), Allied Barton Security Services LP, and Allied Barton Security Services, LLC (Allied Barton). Lopez executed a written attorney-client retainer agreement with Shtofman and Lim that provided for a 40 percent contingency fee, to be divided equally between Shtofman and Lim, as well as the express creation of a lien in favor of Shtofman and Lim on any monies Lopez might recover.

Lim and Shtofman initiated and prosecuted the *Lopez* action until January 15, 2014, when Lopez discharged Shtofman as her attorney and proceeded solely with Lim.

In October 2014, Shtofman discovered that Lopez, represented by Lim, had entered into settlements in the *Lopez* action. Shtofman learned that Lopez had settled with Choi and Yun and their insurer, Alliance United Insurance Company (Alliance), for $15,000. Shtofman also learned that Lopez had settled with Orozco and his insurer, 21st Century Centennial Insurance Co. (21st Century), for $10,000. More significantly, Shtofman discovered that Lopez had entered into a $1.5 million settlement with Allied Barton and its insurer, Arch. At no time did Lim and Lopez advise Shtofman of these settlements.

Shtofman asserted the following causes of action: (1) against Lopez for breach of written contract, i.e., the written retainer agreement, and for quantum meruit; (2) against Lim for breach of fiduciary duty, conversion, breach of written contract, quantum meruit, breach of statutory and/or ethical duties, and fraud; (3) against Arch, Alliance, and Lim for imposition of a constructive trust (ninth cause of action); and against Arch,

Alliance, 21st Century, and Lim for interference with prospective economic advantage (tenth cause of action).

b. *Arch's cross-complaint against Lim and Lopez for indemnification.*

On December 1, 2016, Arch filed a cross-complaint against Lim and Lopez for indemnification, seeking no less than $79,000 in attorney fees as damages.[2]

c. *Lim's and Lopez's cross-complaint against Shtofman.*

On April 11, 2017, Lim and Lopez filed the operative pleading against Shtofman, a "corrected first amended cross-complaint." It is this pleading that was the subject of Shtofman's special motion to strike.

Lim and Lopez pled that Shtofman had expended only about 10 hours in the *Lopez* action before he was discharged, so the reasonable value of his services, even at his inflated rate of $650 per hour, was no more than $6,500. Further, had Shtofman truthfully alleged the reasonable value of his services rather than seeking $300,000 in attorney fees, Arch would not have incurred at least $79,000 in attorney fees and costs as a defendant in Shtofman's lawsuit, and thus Arch would not have sued Lim and Lopez for indemnification. Lim and Lopez alleged "they suffered no actual damages until December 1, 2016, when Arch . . . filed its Cross-Complaint for indemnification and demanded no less than $79,000 in attorney's fees as damages."

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[2] It appears that Lim and Lopez were contractually bound to indemnify Arch for all attorney fees and costs in the defense of any action filed by any party, including Shtofman.

The operative cross-complaint asserted the following seven causes of action against Shtofman: (1) by Lim and Lopez for implied contractual indemnification; (2) by Lim and Lopez for equitable contribution; (3) by Lopez for breach of fiduciary duty; (4) by Lopez for breach of the implied covenant of good faith and fair dealing; (5) by Lim for breach of the implied covenant of good faith and fair dealing; (6) by Lim and Lopez for abuse of process; and (7) by Lim and Lopez for declaratory relief. Specifically, Lim and Lopez alleged that, as a result of Shtofman's filing and prosecution of his "frivolous" action against Arch, Lim and Lopez were exposed to damages in the form of attorney fees for the cost of Arch's defense based on an indemnification clause in the settlement agreement between Arch, Lim and Lopez. Lim and Lopez sought to recover from Shtofman any and all damages they would incur arising out of Arch's indemnification claims.

2. *Shtofman's special motion to strike.*

Shtofman filed a special motion to strike Lim's and Lopez's cross-complaint, contending that the challenged causes of action arose from his protected petitioning activity in suing to be paid for his legal services in the *Lopez* action.

Shtofman further argued that his right to file court papers was protected by the litigation privilege, and thus Lim and Lopez could not prevail on their claims against him.[3]

3. *Opposition to the special motion to strike*.

Lim and Lopez each filed opposition to Shtofman's special motion to strike.

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[3] The trial court disregarded the excessive pages in Shtofman's moving memorandum of points and authorities, and thus those pages were omitted from the Appellant's Appendix.

Lim argued that an action by a former co-counsel against an attorney for legal malpractice-related acts does not fall within the purview of section 425.16. Lim also contended that Shtofman's action was objectively frivolous, because he sought to enforce a lien against Arch even though he knew he had never given Arch notice of his lien. Additionally, Shtofman's demand for quantum meruit recovery of $305,000 (20 percent of the $1,525,000 gross settlement amount), which was half of the amount of the alleged contingency share, was not supported by law.

With respect to Lim's likelihood of prevailing on her cross-complaint, Lim asserted there was sufficient evidence to support a prima facie showing of facts to sustain a favorable judgment against Shtofman with respect to each of her claims against him. Lim argued that because Shtofman had demanded an unconscionable amount of attorney fees from Arch, he intentionally and maliciously exposed his former co-counsel, Lim, to damages for the cost of Arch's defense, and thus Shtofman must indemnify Lim for those damages. Lim's supporting declaration stated, inter alia, that at the time Shtofman was discharged by Lopez, he had expended no more than 10 hours on the case.

Lopez separately argued that because she was suing Shtofman for his acts and/or omissions as an attorney both during and after his representation of her, not for his petitioning activity, section 425.16 is inapplicable as a matter of law. Lopez also asserted there was sufficient evidence to support a prima facie showing of facts to sustain a favorable judgment against Shtofman on each of the claims that she had pled against him in the cross-complaint.

4. *Trial court's ruling*.

On July 20, 2017, after taking the matter under submission, the trial court granted Shtofman's special motion to strike the cross-complaint in its entirety.

With respect to the first prong of the anti-SLAPP analysis, the trial court found that the entire cross-complaint arose out of Shtofman's protected activity. "Here, the indemnity claims, the [f]irst (implied indemnification) and [s]econd (contribution) causes of action, are based on the allegation that Shtofman's false allegations in his complaint that he filed in this action 'necessitat[ed]' Arch to defend itself, thereby causing Lopez and Lim to incur additional fees and costs. . . . The allegations make clear that had Shtofman not commenced this action, there would be no occasion for Arch to seek indemnity from Lopez and Lim, and Arch could not rely on its agreement with Lopez and Lim to indemnify Arch for fees and costs in defense of Shtofman's action. . . . [¶] In other words, the fact of Shtofman's lawsuit caused Lim and Lopez's damages."

The trial court further found that "[a]lmost identically, the [t]hird cause of action for breach of fiduciary duty by Lopez is based on the allegation that Shtofman's false allegations in his complaint that he filed in this action 'necessitat[ed]' Arch to defend itself, thereby causing cross-complainants to incur additional fees and costs." Similarly, the fourth and fifth causes of action for breach of the implied covenant of good faith and fair dealing were "based on the allegation that Shtofman's false allegations in his complaint that he filed in this action 'necessitat[ed]' Arch to defend itself, thereby causing Lopez and Lim to incur additional fees and costs." Likewise, the sixth cause of action for abuse of process was based on allegations that

Shtofman falsified allegations in his complaint that he filed in this action. Finally, the seventh cause of action for declaratory relief was based on the preceding causes of action. Thus, "the gravamen of all of Lopez and Lim's claims is Shtofman's filing this action originally. In other words, 'the speech or petitioning activity itself is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.' "

Turning to the second prong, the trial court found that Lim and Lopez "have no possibility of prevailing against Shtofman on their operative cross-complaint." The trial court reasoned that "the complained of conduct is, at its core, based on Shtofman's filing his complaint in this action. Accordingly, the absolute litigation privilege applies."

Lim and Lopez filed a timely notice of appeal from the order granting Shtofman's special motion to strike.

CONTENTIONS

Lim and Lopez contend the trial court erred in granting Shtofman's special motion to strike because (1) attorney fee disputes do not rise to the level of constitutionally protected speech for purposes of section 425.16; (2) the litigation privilege does not apply to attorney fee disputes, actions grounded in legal malpractice, or for breach of an attorney's continuing duty of loyalty; (3) Shtofman had a continuing duty to Lopez, his former client; (4) Shtofman's special motion to strike was unsupported by admissible evidence; (5) the trial court committed reversible error in failing to weigh the evidence in support of the cross-complaint; and (6) sufficient facts have been alleged to demonstrate that Lim and Lopez will prevail on their cross-complaint.

DISCUSSION

1. *General principles.*

"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).)

We review an order granting or denying an anti-SLAPP motion de novo, conducting the same two-step process as does the trial court to determine whether (1) as a matter of law, the defendant met his initial burden of showing the challenged claim arose out of the defendant's protected activity and, (2) if so, whether the plaintiffs met their burden of showing a probability of success. (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 112–113.)

2. *Prong one: Shtofman met his burden to establish the operative cross-complaint by Lim and Lopez arose out of his protected activity in suing Arch for $300,000 in attorney fees that he allegedly earned in the* Lopez *case.*

The trial court properly determined that the entire cross-complaint by Lim and Lopez against Shtofman arose out of Shtofman's protected petitioning activity in suing Arch for the $300,000 in attorney fees that he allegedly earned in the *Lopez* action. This is made clear in paragraph 48.1 of the operative cross-complaint, wherein Lim and Lopez alleged "that they suffered no actual damages until December 1, 2016, when Arch Insurance Company filed its Cross-Complaint [against Lim and Lopez] for indemnification and demanded no less than $79,000 in

attorney's fees as damages." Thus, Lim's and Lopez's cross-complaint against Shtofman arose out of his protected activity in suing Arch for $300,000 in fees, which led to Arch's cross-complaint against Lim and Lopez for indemnification.

Lim and Lopez take the position that their cross-complaint against Shtofman is not subject to the anti-SLAPP statute because attorney fee disputes do not rise to the level of constitutionally protected activity for purposes of section 425.16. The argument is unavailing.

We are mindful "[i]t is well settled that not all litigation-related conduct is protected activity. (See, e.g., *California Back Specialists Medical Group v. Rand* (2008) 160 Cal.App.4th 1032, 1036–1037 [lawsuit concerning the validity of medical liens asserted in a personal injury action did not target protected activity]; *Personal Court Reporters, Inc. v. Rand* (2012) 205 Cal.App.4th 182, 189–194 [lawsuit by court reporters to recover fees incurred in underlying action did not target protected activity].) None of the purposes of the anti-SLAPP statute would be served by elevating a fee dispute to the constitutional arena, thereby requiring a party seeking a declaration of rights under an attorney lien to demonstrate a probability of success on the merits in order to obtain equitable relief." (*Drell v. Cohen* (2014) 232 Cal.App.4th 24, 30.)

Here, however, the cross-complaint that Lim and Lopez filed against Shtofman is not merely a fee dispute between an attorney and a former client and co-counsel. After the underlying *Lopez* action was settled, Shtofman sued Arch, Allied Barton's insurer, to recover the $300,000 that he allegedly had earned in the *Lopez* action, and Lim and Lopez then brought the instant cross-complaint against Shtofman based on his protected activity

in having sued Arch. Thus, the cross-complaint by Lim and Lopez against Shtofman arose squarely out of Shtofman's protected activity in having sued Arch.

Lim and Lopez also seek to characterize their cross-complaint as "sounding in legal malpractice" and therefore outside the purview of the anti-SLAPP statute. (See, e.g. *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 630—631 [action for attorney malpractice did not arise out of protected activity].) However, the argument is meritless because Lim's and Lopez's cross-complaint against Shtofman sought indemnification for any damages they incurred as a result of Arch's cross-complaint against them; Lim's and Lopez's cross-complaint did not assert a claim against Shtofman for legal malpractice in the *Lopez* action. Although the cross-complaint by Lim and Lopez against Shtofman did include allegations sounding in malpractice, e.g., that Shtofman mishandled the deposition of defendant Orozco, the cross-complaint was predicated entirely on Shtofman's protected activity in having sued Arch for the $300,000 that he allegedly was due. As indicated, the cross-complaint essentially conceded the point by alleging at paragraph 48.1 that Lim and Lopez were not damaged "until December 1, 2016, when Arch . . . filed its cross-complaint [against them] for indemnification and demanded no less than $79,000 in attorney fees as damages."

Thus, the trial court properly determined that Lim's and Lopez's cross-complaint against Shtofman arose out of his protected activity, so as to shift the burden to Lim and Lopez to establish a probability of prevailing on their claims.[4]

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[4] At oral argument, Lim and Lopez asserted the anti-SLAPP statute does not apply because Shtofman engaged in illegal

3. *Prong two: the trial court properly ruled that Lim and Lopez failed to show a probability of prevailing on their claims.*

a. *The litigation privilege.*

" 'The litigation privilege, found in Civil Code section 47, subdivision (b)(2), "applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The privilege "immunizes defendants from virtually any tort liability (including claims for fraud), with the sole exception of causes of action for malicious prosecution." (*Olsen v. Harbison* (2010) 191 Cal.App.4th 325, 333.) In the anti-SLAPP context, the litigation privilege presents "a substantive defense a plaintiff must overcome to demonstrate a probability of prevailing." (*Flatley v. Mauro* [(2006)] 39 Cal.4th [299,] 323 . . . .) "*Any doubt as to whether the privilege applies is resolved in favor of applying it*. [Citations.]" (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529.)' (*Greco v. Greco* (2016) 2 Cal.App.5th 810, 826.)" (*Crossroads Investors, L.P. v. Federal National Mortgage Assn*. (2017) 13 Cal.App.5th 757, 785—786, italics added (*Crossroads*).)

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conduct by seeking an unconscionable fee. This issue, which was not raised by Lim and Lopez in their appellants' opening brief, is not properly before us. (*Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 296, fn. 7 [issues not raised in the appellant's opening brief are deemed waived or abandoned].)

b. *Applicability of the litigation privilege to claims asserted by Lim and Lopez in their cross-complaint against Shtofman.*

(1) *The tort of breach of fiduciary duty.*

In her cause of action for breach of fiduciary duty (third cause of action), Lopez pled that Shtofman breached his fiduciary duty by falsely alleging that Arch owed him $300,000, rather than the $6,500 to which he was entitled in quantum meruit, causing Lopez to be faced with a demand by Arch for at least $79,000 in indemnification.

"[A] breach of fiduciary duty is a species of tort distinct from a cause of action for professional negligence. [Citations.] The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach. [Citation.]" (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.) The State Bar's Rules of Professional Conduct, together with statutes and general principles regarding fiduciary relationships, all help define the scope and nature of an attorney's fiduciary duties. (*Mirabito v. Liccardo* (1992) 4 Cal.App.4th 41, 45.)

Lopez cannot overcome the litigation privilege because her breach of fiduciary duty claim rests solely on communicative conduct in the course of Shtofman's lawsuit against Arch, specifically, the pleadings filed in that action. As such, Lopez's claim falls squarely within the scope of the litigation immunity provided for in Civil Code section 47, subdivision (b). Clearly, the practical result of the application of the privilege in such circumstances is to preclude a potentially valid cause of action from going forward. But, as the California Supreme Court has stated, the rule of " ' "utmost freedom of access to the courts

without fear of being harassed subsequently by derivative tort actions" [is assured] by extending a broad privilege for publications made in the course of litigation. [Citations.]' " (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 339.)

Thus, the trial court correctly found there was no reasonable probability that Lopez could prevail on her cause of action for breach of fiduciary duty.

(2) *The tort of abuse of process*.

In their cause of action for abuse of process (sixth cause of action), Lim and Lopez alleged that Shtofman wrongfully sued Arch, Allied Barton's insurer, "for the sole purpose of using his action against Arch as leverage to obtain more money tha[n]" he was lawfully entitled to.

"The common law tort of abuse of process arises when one uses the court's process for a purpose other than that for which the process was designed. . . . . [¶] '[T]he essence of the tort [is] . . . misuse of the power of the court; it is an act done in the name of the court and under its authority for the purpose of perpetrating an injustice.' [Citation.] To succeed in an action for abuse of process, a litigant must establish that the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings. [Citation.]" (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056—1057 (*Rusheen*).)

The "[p]leadings and process in a case are generally viewed as privileged communications." (*Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 770; accord, *Rusheen*, *supra*, 37 Cal.4th at p. 1058.) Because Shtofman's allegedly wrongful conduct in filing suit against Arch for an ulterior motive was privileged, the trial

court correctly found there was no reasonable probability that Lim and Lopez could prevail on their abuse of process claim.

(3) *Lim's and Lopez's other claims that are predicated on Shtofman's allegedly fraudulent allegations.*

Although the general rule is that the litigation privilege bars derivative *tort* actions, except malicious prosecution (*Rusheen*, *supra*, 37 Cal.4th at p. 1057), the litigation privilege will also "apply to contract claims . . . if the agreement does not 'clearly prohibit' the challenged conduct,[5] and if applying the privilege furthers the policies underlying the privilege. [Citation.]" (*Crossroads*, *supra*, 13 Cal.App.5th at p. 787.)

Here, Lopez pled in the fourth cause of action that a covenant of good faith and fair dealing was implied in her retention of Shtofman as counsel, and that he breached the implied covenant by falsely alleging that Arch owed him the sum of $300,000. Similarly, Lim alleged in the fifth cause action that she and Shtofman had an agreement with an implied covenant of good faith and fair dealing, and that Shtofman breached the implied covenant by falsely alleging that Arch owed him $300,000, which exposed Lim to a claim by Arch for damages that Arch incurred in defending against Shtofman's lawsuit. On this record, the two-part test for applying the litigation privilege to these contractual claims is satisfied.

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[5] *Crossroads* reasoned: "If one expressly contracts not to engage in certain speech or petition activity and then does so, applying the privilege would frustrate the very purpose of the contract if there was a privilege to breach it." (*Crossroads*, *supra*, 13 Cal.App.5th at p. 787.) Therefore, if the contract expressly prohibits the conduct at issue, the litigation privilege does not apply to bar the claim.

First, there is no indication that any agreement between Shtofman and Lopez, or between Shtofman and Lim, "clearly prohibited" Shtofman from suing Arch for the attorney fees that he allegedly was due. (*Crossroads*, *supra*, 13 Cal.App.5th at p. 787.)

Second, it is undisputed that Lim's and Lopez's claims against Shtofman are predicated on the allegedly false allegations that Shtofman made in his pleadings. In their supplemental letter brief,[6] Lim and Lopez acknowledged: "The crux of [their] Corrected First Amended Cross-Complaint is that [Shtofman] fraudulently alleged that Arch . . . owed [him] the sum of $300,000, which was an amount based on [one-half of the] contingency amount, rather than quantum meruit of approximately $6,500, for the ten hours expended by [him]." Accordingly, applying the litigation privilege to Lim's and Lopez's claims that sound in contract furthers the policies underlying the privilege—particularly, affording a litigant freedom of access to the courts without fear of being harassed by derivative actions. (*Crossroads*, *supra*, 13 Cal.App.5th at p. 787.)

We reach the same conclusion with respect to two other claims asserted in the cross-complaint: a claim by Lim and Lopez for implied contractual indemnification (first cause of action);[7]

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[6] Prior to oral argument, this court requested supplemental briefing (Gov. Code, § 68081) with respect to the applicability of the litigation privilege to the five non-tort claims that were pled in the cross-complaint.

[7] An implied contractual indemnity action "is predicated on the indemnitor's breach of duty owing to the indemnitee to properly perform its contractual responsibilities." (*Sehulster*

and a claim by Lim and Lopez for equitable contribution (second cause of action).[8] In the first cause of action, Lim and Lopez sought indemnification for their liability to Arch "because . . . Shtofman proceeded with a legal action in which he falsely alleged that Arch . . . owed him the sum of $300,000." Similarly, in the second cause of action, Lim and Lopez sought contribution from Shtofman toward their obligation to Arch "because . . . Shtofman proceeded with a legal action in which he falsely alleged that Arch . . . owed him the sum of $300,000." Thus, in both of these claims, Lim and Lopez sought to recover against Shtofman for the privileged allegations that he asserted in his action against Arch. Therefore, these two causes of action likewise are barred by the litigation privilege.

c. *The seventh cause of action for declaratory relief: no showing by Lim and Lopez of a probability of declaratory relief in their favor.*

"To qualify for declaratory relief, [a party] would have to demonstrate its action presented two essential elements: '(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to [the party's] rights or obligations.' " (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582.)

Tunnels/Pre-Con v. Traylor Bros., Inc./Obayashi Corp. (2003) 111 Cal.App.4th 1328, 1351.)

[8] Contribution is the right to recover from a co-obligor. Where several parties such as sureties, guarantors, coinsurers, or partners are jointly liable, and one has paid more than his or her share, that party may enforce contribution from the others. (13 Witkin, Summary of Cal. Law (11th ed. 2019) Equity, § 200.)

Here, the seventh cause of action by Lim and Lopez sought a judicial determination that Shtofman had engaged in misconduct such that he was not entitled to recover any attorney fees, in quantum meruit or otherwise. Lim and Lopez argued below that Shtofman's theory that he was entitled to $300,000 of the $1.5 million settlement, that is to say, a full contingency share, "is unconscionable as a matter of law." On appeal, Lim and Lopez contend the trial court committed reversible error simply because they are entitled to a judicial determination of the parties' rights and obligations under applicable law. Their argument is meritless because Lim and Lopez had the burden below, in opposing the anti-SLAPP motion, and now on appeal, to show a *probability of prevailing* on their declaratory relief claim—it is insufficient for a plaintiff (or cross-complainant) opposing an anti-SLAPP motion merely to demonstrate the existence of a controversy requiring a judicial determination.

It is established that an anti-SLAPP motion may lie against a complaint for declaratory relief, and that " 'the mere existence of a controversy is insufficient to overcome an anti-SLAPP motion against a claim for declaratory relief. [¶] To defeat an anti-SLAPP motion, the plaintiff must also make a prima facie evidentiary showing to sustain a judgment in the plaintiff's favor. [Citation.] In other words, for a declaratory relief action to survive an anti-SLAPP motion, the plaintiff must introduce substantial evidence that would support a judgment of relief made in the plaintiff's favor.' [Citations.]" (*Mission Springs Water Dist. v. Verjil* (2013) 218 Cal.App.4th 892, 909.)

Here, the opening brief by Lim and Lopez does nothing more than assert the existence of a controversy requiring judicial clarification. In the absence of any legal argument, supported by

citation to substantial evidence in the record, that they had a probability of prevailing on their declaratory relief claim, Lim and Lopez fail to show the trial court erred in granting the anti-SLAPP motion as to the seventh cause of action.[9]

[9] On the seventh cause of action, because Lim and Lopez did nothing more than demonstrate the existence of a controversy, it is unnecessary to address the applicability of the litigation privilege to this cause of action.

DISPOSITION

The order granting the special motion to strike is affirmed. Shtofman shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

EGERTON, J.

HANASONO, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.