COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
NO. 2584CV02663

FRANK CIERI, et al.

vs.

VICTORIA WATERS

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS

The plaintiffs in this suit, various shareholders and creditors of Atlantic Medicinal Partners, Inc. (AMP), have sued Victoria Waters, another alleged creditor of AMP. Ms. Waters is currently locked in an arbitration battle with AMP. Plaintiffs tried to intervene in that arbitration, but the arbitrator denied that request. Plaintiffs then turned around and sued Ms. Waters in Superior Court. Previously, plaintiffs asked this Court to enjoin the arbitration between Ms. Waters and AMP, even though AMP is not a party to these proceedings. The Court denied Plaintiffs' request for an injunction.

Ms. Waters has now moved to dismiss this case. She has moved to dismiss under Rule 12, arguing that the complaint fails to state any viable claims or otherwise must be dismissed for want of jurisdiction or for failure to join AMP as a party. She has also invoked the anti-SLAPP special motion to dismiss procedure of G. L. c. 231, § 59H. Plaintiffs oppose these motions. After hearing and in consideration of the parties' submissions, the Court will **ALLOW** Ms. Waters's special motion to dismiss Count I of this suit under G. L. c. 231, § 59H and will otherwise **DENY** Ms. Waters's motion to dismiss Count II under Rule 12.

BACKGROUND

The plaintiffs here are the primary shareholders of AMP or its creditors. All told, the

plaintiffs have invested or loaned more than $8 million to AMP and they hold about 90% of the stock in the company. Ms. Waters also owns a stake in AMP – albeit a much smaller one, roughly 2.66% of the company. Ms. Waters contends that she executed a loan agreement with AMP, one that requires her to arbitrate any disputes with AMP. (The parties here dispute the existence of this contract.)

Ms. Waters also filed a UCC-1 financing statement with the Secretary of the Commonwealth purporting to perfect a security interest in certain assets of AMP. Plaintiffs allege that this UCC-1 form is bogus because it is based on a cancelled or otherwise invalid agreement between AMP and Ms. Waters. Ms. Waters, though, has pursued repayment from AMP for the alleged loan she made to AMP – even though AMP does not have cash on hand to pay off that loan. Plaintiffs are upset that Ms. Waters as a fellow shareholder is seeking to outmaneuver them as a creditor and to get first dibs on AMP's assets. Again, the parties dispute these facts.

Ms. Waters commenced an arbitration against AMP seeking money from the company. Plaintiffs tried to intervene in that arbitration, but their request was rejected. Plaintiffs then sprinted to Superior Court to file this case in a transparent attempt to stop the arbitration, going so far as to ask this Court to enjoin the arbitration proceeding altogether.

Ms. Waters has now moved to dismiss.

ANALYSIS

Special Motion to Dismiss (Count I)[1]

As discussed at argument, the Court must first address the special motion to dismiss under G.L. c. 231, § 59H. This sequence is dictated by the anti-SLAPP statute, which

[1] Ms. Waters's special motion is directed at only Count I of the complaint, which asserts a claim for breach of fiduciary duty.

automatically stays discovery (subject to certain exceptions) and directs the judge to consider the merits of the special motion to dismiss on an expedited basis. See G. L. c. 231, § 59H ("court shall advance any such special motion so that it may be heard and determined as expeditiously as possible" and "[a]ll discovery proceedings shall be stayed upon the filing of the special motion ... provided, however, that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted"). If the anti-SLAPP statute applies, the case will be dismissed. If it is denied, then and only then will the Court consider the motion to dismiss on other alternative bases. See Kobrin v. Gastfriend, 443 Mass. 327, 341 (2005).

The so-called anti-SLAPP statute was enacted in response to the problem of frivolous "lawsuits directed at individual citizens of modest means for speaking publicly against development projects." Duracraft Corp. v. Holmes Prods. Corp., 427 Mass. 156, 161 (1998). To facilitate the early dismissal of meritless claims of this nature, the statute established a procedure whereby a party may file a special motion to dismiss any "civil claims, counterclaims, or cross claims" that have been filed against him or her that "are based on" the exercise of his or her right of petition, as defined by the statute. G. L. c. 231, § 59H. See Bristol Asphalt Co. v. Rochester Bituminous Prods., Inc., 493 Mass. 539, 540-41(2024). To prevent these special motions to dismiss, and the powerful procedural protections they afford to litigants, from being misused to quell petitioning activity, our appellate courts have adopted "a necessarily narrow and strict construction of the statute." Id. at 555. The Supreme Judicial Court has developed and refined a two-stage, burden-shifting framework for analyzing the merits of a special motion to dismiss like this one that has been filed under G. L. c. 231, § 59H. See Bristol Asphalt, 493 Mass. at 555-559.

At the first stage of the framework, the party seeking dismissal of a claim (i.e., the special

motion proponent, Ms. Waters) has a threshold burden to show that the challenged claim is based solely on her exercise of the right to petition, with no substantial basis other than or in addition to those petitioning activities. Id. at 555-556. If the special motion proponent cannot make this showing, the motion is denied, and the challenged claim survives. Id. at 556.

If the special motion proponent does make this showing, the court moves to the second stage of the framework, where the burden shifts to the opponent of the special motion to dismiss, (i.e., the party who is seeking to avoid dismissal of their claim, here the plaintiffs). Id. at 556-557. At the second stage, a special motion opponent must show, by a preponderance of the evidence, that the petitioning activity the opponent complains of "was devoid of any reasonable factual support or any arguable basis in law" and caused the opponent "actual injury" in order for the challenged claim to survive. Bristol Asphalt, 493 Mass. at 557, quoting G. L. c. 231, § 59H. See Bristol Asphalt, 493 Mass. at 559-560 (explaining that "our jurisprudence has tended to equate [this] standard ... with the concept of frivolousness" [quotation and citation omitted]). Notably, unlike a motion to dismiss under Mass. R. Civ. P. 12(b)(6), this analysis "is focused exclusively on the [proponent's] petitioning activity," rather than the legal merits of the special motion opponent's claims. Bristol Asphalt, 493 Mass. at 550. Unless the special motion opponent can show that the proponent's "petitioning activity was devoid of any reasonable basis in fact or law, the opponent's claims – regardless of their underlying merits – must be dismissed" (quotations and citation omitted). Id. Our courts have been clear that the second stage imposes a "high bar" for a special motion opponent seeking to avoid dismissal of his or her claim (citation omitted). Bristol Asphalt, 493 Mass. at 558. The special motion opponent must, in effect, show that the other party's petitioning activity was a "sham." Id. at 566.

Consider the first part of the Bristol Asphalt analysis. At this first stage, Ms. Waters has

the "threshold burden to show" that this suit "was based solely on [her] exercise of her right to petition, with no other substantial basis." Allegaert v. Harbor View Hotel Owner LLC, No. SJC-13788, 2026 WL 816048, at *5 (Mass. Mar. 25, 2026). The parties expend all their energy addressing this threshold issue. Rightfully so: the question of whether Ms. Waters has engaged in protected petitioning activity is both somewhat novel and quite close.

Ms. Waters primarily says that plaintiffs filed this suit to squelch the arbitration she initiated against AMP. Ms. Waters argues that the commencement of an arbitration proceeding counts as petitioning for purposes of the anti-SLAPP statute and that plaintiffs are seeking to chill this petitioning activity through this suit. Plaintiffs disagree. They argue that the arbitration is not petitioning activity within the meaning of the statute. If Plaintiffs are right, then the special motion to dismiss must be denied. If Ms. Waters is right that the arbitration was petitioning activity, and if plaintiffs' suit is based solely on her exercise of her right to petition, with no other substantial basis, then I must proceed to stage two of the Bristol Asphalt analysis.

What counts as petitioning under the statute? Quite a bit, it turns out, and much judicial ink has been deployed in service of defining the scope of petitioning under the anti-SLAPP law. See Bristol Asphalt, 493 Mass. at 549 ("a large body of case law has developed construing the meaning and scope of this statutory definition"); see also Blanchard v. Steward Carney Hosp., Inc., 477 Mass. 141, 153 n.19 (2017) (Blanchard I) (collecting cases), overruled on other grounds by Bristol Asphalt, 493 Mass. 539. The anti-SLAPP statute "defines the exercise of petitioning rights broadly." Lucey v. Kinnon, 106 Mass. App. Ct. 358, 362 (2025). But "the anti-SLAPP statute's definition of petitioning has been further defined and limited, by the Supreme Judicial Court." Id. at 363. "Most fundamentally, the [SJC's] analysis recognizes that although the statutory definition is broad, it has limits; the language must be read consistently with the anti-

SLAPP statute's intended purpose, which is to protect statements that are intended to seek redress from the government." Id. at 364. Accordingly, and as all parties acknowledged in their briefing, some sort of a communication "made to influence, inform, or at the very least, reach governmental bodies—either directly or indirectly" is required. Id., quoting Blanchard I, 477 Mass. at 149. The "key requirement of this definition of petitioning is the establishment of a plausible nexus between the statement and the governmental proceeding." Blanchard I, 477 Mass. at 149.

So, what does the case law say about arbitrations? Does arbitration count as petitioning activity? Despite that ocean of judicial ink on this subject, our courts have not had much occasion to wade into the topic of whether private arbitrations qualify as petitioning activity. To the court's knowledge, there is no case law that definitively says – one way or the other – that such activities can qualify as petitioning under the anti-SLAPP law, and the parties do not point to any. At argument, in fact, all parties agreed that this question has not been decisively addressed by any appellate court in Massachusetts.

Still, the Appeals Court has at least left a few breadcrumbs along the trail concerning arbitration in the context of special motions to dismiss. The Appeals Court has previously "assumed that a party's assertions made in the course of a Department of Telecommunications and Energy arbitration proceeding are petitioning activity." Dever v. Ward, 92 Mass. App. Ct. 175, 180 (2017), citing Global NAPS, Inc. v. Verizon New England, Inc., 63 Mass. App. Ct. 600, 604 n.4 (2005). The Appeals Court has also assumed without deciding that statements made in a FINRA arbitration can fall within the definition of petitioning activities. Dever, 92 Mass. App.

Ct. at 180.[2] Critically, though, these arbitration proceedings were either governmental in nature (involving the Department of Telecommunications and Energy) or quasi-governmental (involving FINRA). As plaintiffs correctly point out, the present case is different in that it involves private civil arbitration between two parties, Ms. Waters and AMP, and in both these appellate cases, the court never actually held that arbitration is petitioning activity.

Given the dearth of controlling cases, what's a trial judge to do? Under these circumstances, I find it most productive to retreat to and consider broader precepts promulgated by our appellate courts, both within the context of the anti-SLAPP law and beyond. First, in construing the anti-SLAPP statute, our courts have emphasized that "commencing a lawsuit is a quintessential example of engaging in petitioning activity." Allegaert v. Harbor View Hotel Owner LLC, No. SJC-13788, 2026 WL 816048, at *5 (Mass. Mar. 25, 2026). See 477 Harrison Ave., LLC v. JACE Boston, LLC, 483 Mass. 514, 520, 134 N.E.3d 91 (2019) (Harrison II). Whenever a person files a lawsuit, they are typically engaged in protected petitioning activity within the meaning of the anti-SLAPP statute.

Second, arbitrations are designed to feel quite a bit like litigation in the trial courts. Fundamentally, arbitration is an alternative means of obtaining dispute resolution through an adversary process. The Massachusetts Arbitration Act, for instance, recognizes that in arbitration, all parties must be afforded notice and an opportunity to be heard; given the ability to present evidence, and the ability to cross-examine witnesses. G. L. c. 251, § 5. Arbitrators can cause to be issued subpoenas and can administer oaths. G. L. c. 251, § 7. Arbitrators can permit

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[2] The Appeals Court in Dever also cited two California cases that reached contradictory results on the topic of whether arbitration was activity shielded by that state's anti-SLAPP law. Compare Century 21 Chamberlain & Assocs. v. Haberman, 173 Cal. App. 4th 1, 5, 92 Cal.Rptr.3d 249 (2009) (California anti-SLAPP statute does not protect participation in private contractual arbitration), with Mallard v. Progressive Choice Ins. Co., 188 Cal. App. 4th 531, 535, 115 Cal.Rptr.3d 487 (2010) (California anti-SLAPP law applies to statutorily mandated arbitration of uninsured motorist claim disputes). See also Kolar v. Donahue, McIntosh & Hammerton, 145 Cal. App. 4th 1532, 1538 (2006) ("pursuit of arbitration proceedings is a protected activity" under California anti-SLAPP statute).

depositions to take place. G. L. c. 251, § 7. Arbitration can also involve discovery procedures set forth in the Rules of Civil Procedure. G. L. c. 251, § 7. Judgments obtained in arbitration proceedings can be given preclusive effect just as a judgment in this court can. See Bailey v. Metro. Prop. & Liab. Ins. Co., 24 Mass. App. Ct. 34, 36 (1987) (explaining that "arbitration decision can have preclusive effect"). In fact, our case law has treated private arbitrators much the same as judges in a variety of contexts. For example, "as early as 1884, the Supreme Judicial Court granted absolute immunity to arbitrators as 'quasi judicial officer[s] ... exercising judicial functions.'" Padmanabhan v. City of Cambridge, 99 Mass. App. Ct. 332, 339 (2021), quoting Hoosac Tunnel Dock & Elevator Co. v. O'Brien, 137 Mass. 424, 426 (1884). This is because the "'"same considerations of public policy apply' to arbitrators" as well as to judges. Comins v. Sharkansky, 38 Mass. App. Ct. 37, 39 (1995), quoting Hoosac Tunnel Dock & Elevator Co., 137 Mass. at 426.

Third, in recognition of the judicially adjacent role that arbitrators and arbitrations play, our statutory law, our procedural law, and our case law have developed mechanisms where arbitrations necessarily intersect with the judiciary and civil procedure. For example, once the arbitration is completed and the arbitrator issues an award, the Massachusetts Arbitration Act "sets the procedure for limited judicial review of the award itself." Kauders v. Uber Techs., Inc., 486 Mass. 557, 567 (2021). Either party to an arbitration can move to vacate, modify, or correct the award in Superior Court. G. L. c. 251, § 11. Section 12(a) provides the grounds for vacating an award, and Section 13(a) provides the grounds for modifying or correcting an award. These grounds focus on problems with the arbitration and the award itself, such as fraud, partiality of the arbitrator, or miscalculations of figures. See G. L. c. 251, §§ 12 (a) (1)-(5) (grounds for vacating award), 13 (a) (1)-(3) (grounds for modifying or correcting award). Indeed, the

Superior Court recently issued Administrative Directive 25-1 to clarify procedure for handling these kinds of cases that arise under the Massachusetts Arbitration Act.

Finally, there is a strong public policy in Massachusetts that favors resolution of cases through arbitration. As the Supreme Judicial Court recently explained, Massachusetts law "expresses a strong public policy favoring arbitration." Good v. Uber Techs., Inc., 494 Mass. 116, 125 (2024) (citations omitted). The Supreme Judicial Court has also admonished that arbitration is not to be treated as a lesser brand of dispute resolution. See Id. (noting that the law condemns "a 'paternalistic attitude' prevalent among some judges that 'only they could ensure that individual plaintiffs would be afforded a fair opportunity to challenge corporate defendants.'").

So if (1) litigation in the trial courts is considered bedrock petitioning activity under the anti-SLAPP statute, (2) arbitration is treated much the same way as trial court litigation and features many of the same hallmarks, (3) arbitration disputes frequently intersect with and bubble up to the trial court, and (4) public policy favors arbitration, then it seems that commencing an arbitration should be every bit the petitioning activity that commencing a trial court lawsuit is. Put differently: why should Ms. Waters be barred from using the anti-SLAPP shield when she alleges that she was contractually obliged to arbitrate her dispute with AMP, even though if she had filed suit against AMP in Superior Court, all agree she'd be entitled to the full suite of anti-SLAPP's safeguards.

Nevertheless, Plaintiffs contend that the arbitration here is a purely private affair, involving no government officials. As such, they argue that the anti-SLAPP law's protections cannot apply in the absence of a direct governmental nexus. Plaintiffs' argument, however, is too narrow. Our case law has never required that the nexus between the alleged petitioning

activity and the government be quite as direct as plaintiffs prefer for the anti-SLAPP law to apply. See Blanchard I, 477 Mass. at 150 (considering statements made to the Boston Globe newspaper), Plante v. Wylie, 63 Mass. App. Ct. 151, 159 (2005) (holding conservation trust's settlement letters to developer were made "in connection with" issues before the town planning board, where trust had opposed developer's proposal, and thus constituted petitioning activities). Plaintiffs' reliance on Lucey does not alter this analysis. In Lucey, 106 Mass. App. Ct. at 365-67, statements made in a social media post that were dedicated merely to "throwing barbs" were not considered petitioning because these statements were not reflective of any attempt to influence a governmental proceeding. Contrast MacDonald v. Paton, 57 Mass. App. Ct. 290, 292-95 (2003) (statements on website were petitioning activity by conveying public derision of a local government official).

Consider the state of play here. In Ms. Waters's arbitration, filings were made to an arbitrator, who is treated like a judicial officer in many respects under our case law. The case was filed in that forum because Ms. Waters believes that her alleged contract with AMP required all disputes to be resolved in that forum. The arbitrator is tasked with resolving the dispute between AMP and Ms. Waters. In service of that goal, the parties in the underlying arbitration can use many of the tools of discovery and civil procedure afforded to litigants. In fact, the plaintiffs here tried to intervene in that arbitration, much in the same way that a party could intervene in a Superior Court civil action. All parties in Ms. Waters's arbitration have been afforded notice and a hearing on the merits. And when the arbitrator eventually reaches a judgment, that judgment can be brought before a judge in the trial court – an activity that is certainly protected as petitioning activity directly to a public official, as Plaintiffs recognize – for

confirmation or modification.[3] (In fact, the Court confidently predicts that whatever the result of the arbitration between Ms. Waters and AMP, a motion to confirm, vacate, or modify the arbitrator's decision is a *fait accompli*, and at argument, Ms. Waters's counsel all but promised that when the arbitration is concluded, either she or plaintiffs would be seeking to make the result of that arbitration binding in this proceeding.) These actions all exist on one continuous timeline, and the Court is satisfied that here, Ms. Waters's was engaged in petitioning activity when she started the underlying arbitration. That the underlying arbitration itself is addressed to a UCC-1 filing, one made to a government official, also buttresses the Court's conclusion here.

Having concluded that Ms. Waters engaged in petitioning activities here, I also conclude that the challenged claim (Count I) is based solely on her exercise of the right to petition, with no substantial basis other than or in addition to those petitioning activities. Plaintiffs' allegations in the pleadings and their motion for an injunction here are proof of that. Plaintiffs brought this claim precisely because they were upset that Ms. Waters began this arbitration with AMP. They sought to intervene in the arbitration, and when that request was rebuffed, they turned to the Superior Court to thwart the arbitration, going so far as to file a motion for an injunction to crater the arbitration. This suit is a transparent collateral attack on that arbitration – nothing more, nothing less. As such, Ms. Waters has carried her stage one burden under Bristol Asphalt.

The analysis under stage two is far simpler. Plaintiffs forthrightly acknowledged at oral argument that they cannot discharge their burden under stage two. Plaintiffs cannot show that the Ms. Waters's petitioning activity was a "sham," and they don't pretend otherwise. Accordingly, the Court concludes that the special motion opponent cannot show that the

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[3] In response to a hypothetical posed by the Court at oral argument, plaintiffs acknowledged that if Ms. Waters (or AMP) filed an action in Superior Court to confirm, modify, or vacate any judgment in this arbitration, then that would count as petitioning activity because a government entity – the Superior Court – was involved.

proponent's "petitioning activity was devoid of any reasonable basis in fact or law," and as such, Count I "must be dismissed" regardless of the underlying merits of this claim.

Motion to Dismiss (Count II)

Having disposed of Count I, the Court now turns to Ms. Waters's motion to dismiss Count II, a claim for declaratory judgment. She advances two arguments, one for failure to state a claim and a second for failure to join a necessary party.[4]

To survive a motion to dismiss under Mass. R. Civ. P. 12(b)(6), a complaint must allege facts "plausibly suggesting . . . entitlement to relief[.]" Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007). Detailed factual allegations are not required, but the plaintiff must present more than mere "labels and conclusions," such that the alleged facts "raise a right to relief above the speculative level." Iannacchino, 451 Mass. at 636, quoting Twombly, 550 U.S. at 555. In determining whether a complaint meets this standard, the Court accepts the factual allegations in the complaint as true and draws all reasonable inferences in favor of the non-moving plaintiff. Harrington v. Costello, 467 Mass. 720, 724 (2014).

In considering a motion to dismiss, the Court is generally limited to the four corners of the complaint. There are exceptions to this general rule. The Court may consider "matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint" without converting the motion to one for summary judgment. Reliance Ins. Co. v. Boston, 71 Mass. App. Ct. 550, 555 (2008), quoting Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000). The Court may also consider documents not attached to the Complaint, but upon which the Plaintiff relied in framing the claims therein. Goldin v. Liberty Mut. Ins. Co., 460

[4] Ms. Waters also frames both these arguments in terms of a lack of standing as well under Rule 12(b)(1). Regardless of how the requested relief is teed up, the result is the same.

Mass. 222, 224 (2011).

And because Plaintiffs are seeking judicial review in Count II by way of declaratory judgment, they are bound to join "all persons ... who have or claim any interest which would be affected by the declaration." G.L. c. 231A, § 8. A declaratory judgment cannot issue if the person who will bear the expense of relief is not a party. See Millis v. Massachusetts Bay Transp. Authy., 367 Mass. 831, 834 (1975). Rule 19, although not limited to the context of declaratory relief, is to similar effect. The failure to name necessary parties may be jurisdictional in a declaratory judgment action, thereby precluding the court's consideration of the issue. See Serv. Emps. Int'l Union, Loc. 509 v. Dep't of Mental Health, 469 Mass. 323, 338 (2014).

The gist of Ms. Waters's argument is that any claim for declaratory relief here belongs to AMP, not to these Plaintiffs. At its core, Plaintiffs' claim seeks a declaration that their creditor status to AMP should take priority over Ms. Waters's. The idea here is simple: Plaintiffs want this Court to decide who has a higher priority among competing creditors. Although that dispute touches upon AMP's interests – because AMP allegedly owes money to all parties to this suit – it does not require AMP to participate. Accepting the allegations in the complaint as true, this priority dispute is between Plaintiffs and Ms. Waters. As such, the Court cannot say that AMP is a necessary party in this case – although if AMP wanted to intervene, the Court would consider allowing it to do so. Nor can the Court say that these Plaintiffs lack standing to bring this declaratory judgment action. And the Plaintiffs have certainly done enough to state a plausible claim. Whether they ultimately will prevail is a different matter altogether, and the Court expresses no view on that subject. Accordingly, the Court will deny Ms. Waters's motion to dismiss Count II.

CONCLUSION AND ORDER

For all the foregoing reasons, Ms. Waters's special motion to dismiss Count I is **ALLOWED** and her motion to dismiss Count II is **DENIED**. To the extent that Ms. Waters seeks the payment of legal fees as a result of the Court's decision on the special motion to dismiss, she may submit a properly supported request to the Court pursuant to Superior Court Rule 9A.

SO ORDERED.

/s/ Adam Hornstine
Adam Hornstine
Justice of the Superior Court

Dated: April 28, 2026