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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROBERT WILLIAMSON, et al.,

Plaintiffs and Appellants,

v.

IE STORM TECH LEASING,
LLC, et al.,Defendants and
Respondents.

B349616

(Los Angeles County
Super. Ct. No.
20STCV18855)

APPEAL from a judgment of the Superior Court of Los Angeles County, Christopher K. Lui, Judge. Affirmed.

Whitcomb Selinsky, Joseph A. Whitcomb and A. Ari Aramesh for Plaintiffs and Appellants.

Ferris & Britton and Michael R. Weinstein for Defendants and Respondents IE Storm Tech Leasing, LLC, JC Yeh, and Cindy Guofang Chang.

Jassy Vick Carolan, William T. Um, Jordyn Ostroff and Amanda A. Harris for Defendants and Respondents Steven Lee and Bank of Hope.

Plaintiffs and Appellants, Robert Williamson and Christopher Scott Yenzer, appeal from a judgment dismissing this action for Plaintiffs' failure to bring it to trial within five years pursuant to Code of Civil Procedure sections 583.310 and 583.360.¹ The five-year deadline expired on May 18, 2025. After that date, Defendants and Respondents Lee and Bank of Hope (the Lee Defendants) and Defendants and Respondents IE Storm Tech Leasing, LLC, JC Yeh, and Cindy Guo Fan Chang (the IEST Defendants) filed motions to dismiss. In granting the motions, the trial court rejected Plaintiffs' arguments that (1) section 583.340, subdivision (c), tolled the deadline for a period during which Plaintiffs argued bringing the action to trial was impossible, impracticable, or futile; (2) the parties extended the deadline by oral agreement pursuant to section 583.330, subdivision (b); and (3) Defendants' litigation conduct equitably estopped them from seeking dismissal. Plaintiffs renew those arguments on appeal. Finding no error, we affirm.

BACKGROUND

On May 18, 2020, Plaintiffs filed a complaint against Defendants and others, including Innerline Engineering, Inc. (Innerline). Plaintiffs concede that absent tolling or extension,

¹ Undesignated statutory references are to the Code of Civil Procedure.

the five-year deadline to bring the action to trial expired on May 18, 2025.²

On April 1, 2021, Defendants filed notice of an automatic stay based on a bankruptcy petition filed by Innerline. Days later, on April 9, Defendants filed notice that the bankruptcy court had dismissed Innerline’s petition and vacated the stay.

On April 15, 2021, by email, Plaintiffs’ counsel warned the attorney then representing Defendants that Plaintiffs would seek Defendants’ default if they did not timely answer the complaint. The email cited case law for the proposition that Innerline’s bankruptcy petition had not prevented Plaintiffs from prosecuting the action against Defendants, and parenthetically described one case as upholding a dismissal of an action against a defendant for failure to bring it to trial within the five-year deadline (notwithstanding a stay as to a separate defendant). The email did not otherwise mention the five-year deadline.

In July 2021, the trial court set an initial trial date in October 2022. On August 24, 2021, Defendants filed notice of a second stay—as to Innerline only—based on a second bankruptcy petition filed by Innerline.

In June 2022, the trial court vacated the October 2022 trial date. One year later, the court set a new trial date of October 28, 2024.

² Because Plaintiffs filed the complaint after April 6, 2020, COVID-19 emergency rules did not extend the five-year deadline. (Cal. Rules of Court, appen. I, emergency rule 10(a) [extending deadline by six months in civil actions filed “on or before April 6, 2020”].)

In June 2024, Plaintiffs' counsel emailed Defendants' counsel and stated: "Plaintiffs will be filing a Motion to Continue the trial. With multiple Defendants and a significant amount of remaining discovery and depositions, it is apparent that additional time is needed to continue with and finalize discovery, as well as, address any disputed issues." Defense counsel indicated Defendants had no objection to Plaintiffs' proposed trial continuance.

In July 2024, Plaintiffs' counsel circulated a proposed stipulated order to continue trial, which stated "the parties need additional time to prepare the case for trial" and "a trial date before March 10, 2025 is unamenable [*sic*]." The proposed stipulated order identified March 10, 2025, as the "earliest" acceptable trial date. It did not identify any *latest* acceptable date or address the May 18, 2025 deadline to bring the action to trial. The parties did not file the proposed stipulated order.

On August 5, 2024, at a case management conference, Plaintiffs' counsel informed the court that the parties had communicated regarding a trial continuance and that discovery, including depositions, remained pending. "After conferring with the parties," the trial court vacated the October 28, 2024 trial date on its own motion and scheduled a trial-setting conference on that date. The court ordered the parties to meet and confer regarding a discovery plan and to file a joint report before the trial-setting conference.³

³ Citing a declaration from attorney Joseph Whitcomb, Plaintiffs assert they announced ready for trial on August 5, 2024. The court's August 5, 2024 minute order, however, does not mention either Whitcomb's appearance or that Plaintiffs

On October 18, 2024, new defense counsel substituted in for the Lee Defendants. The same day, Plaintiffs' counsel circulated a proposed pretrial scheduling order that contained blank spaces for various pretrial dates. The proposed order did not address the trial date or the May 18, 2025 deadline to bring the action to trial. On October 21, 2024, Defendants approved the proposed order's form. The parties did not file the proposed order.

On October 28, 2024, the parties appeared at the trial-setting conference. According to the minute order, the Lee Defendants' counsel "indicate[d] that he . . . may be filing a motion for summary judgment." The minute order further states that "[a]fter conferring with the parties," the trial court set a trial date of September 29, 2025. A settled statement subsequently certified by the trial court similarly states that on October 28, 2024: "The Court was informed . . . [the Lee Defendants' counsel] may be filing a motion for summary judgment. After conferring with the parties, the Court set . . . a ten day Jury Trial for September 29, 2025."⁴

As noted, May 18, 2025 was the last day to bring the action to trial. On July 30, 2025 (about 2.5 months after the

announced ready for trial. The record contains no declaration from the attorney who did appear for Plaintiffs on that date, Danyelle Semjonovs. Semjonovs had recently circulated the proposed stipulated order to continue trial that, as noted, indicated the parties needed additional time to prepare for trial.

⁴ Plaintiffs purport to quote the settled statement as stating: "Counsel for all parties either affirmatively assented [to the September 29, 2025 trial date] or registered no objection." That language does not appear in the settled statement.

deadline expired), the Lee Defendants moved to dismiss the action pursuant to sections 583.310 and 583.360. Days later, the IEST Defendants separately moved for dismissal.

The Lee Defendants' attorney declared that when he substituted into the case in October 2024, "other counsel mentioned that the proceedings had been stayed due to Innerline's bankruptcy proceedings, but it was not until later that [he] learned the stay that began on August 24, 2021 was as to Innerline only."⁵ The Lee Defendants' attorney further declared that after Plaintiffs began taking their first depositions in July 2025, he discovered that the five-year deadline had expired and immediately communicated his intent to move for dismissal to all parties. The IEST Defendants' attorney declared that until he received that communication, he had erroneously believed that a COVID-19 emergency rule extended the five-year deadline by six months.

In opposition to the motions to dismiss, Plaintiffs argued that during the October 28, 2024 trial-setting conference, the parties orally agreed to the post-deadline trial date of September 29, 2025, thereby extending the deadline to that date pursuant to section 583.330, subdivision (b). Further, Plaintiffs argued that section 583.340, subdivision (c), tolled the five-year deadline for an unspecified period because at the trial-setting conference, the trial court presented September 29, 2025, as the earliest

⁵ If Innerline's bankruptcy petition had stayed the action as to all parties (as the Lee Defendants' counsel had erroneously believed), the stay would have tolled the five-year deadline as to all parties pursuant to section 583.340, subdivision (b). Plaintiffs do not argue the stay tolled the deadline as to all parties.

available date, making bringing the action to trial before that date impossible, impracticable, or futile. Finally, Plaintiffs argued Defendants' conduct equitably estopped Defendants from seeking dismissal because the Lee Defendants' attorney indicated during the trial-setting conference that he might file a motion for summary judgment, and because Defendants thereafter continued participating in discovery.

The trial court heard and granted Defendants' motions to dismiss. The court concluded the minute order from the October 28, 2024 trial-setting conference did not show that the parties orally agreed to extend the May 18, 2025 deadline pursuant to section 583.330, subdivision (b) (the court had no occasion to address the settled statement because Plaintiffs had not yet asked the court to certify it).

Further, the trial court found that its setting of the September 29, 2025 trial date at the October 28, 2024 trial-setting conference did not make bringing the action to trial within the May 18, 2025 deadline impossible, impracticable, or futile. The court observed that "there are procedures a plaintiff may invoke in order to avoid a five-year dismissal," which procedures include moving to advance a post-deadline trial date to a date within the deadline. Plaintiffs made no such motion.

Finally, the trial court rejected Plaintiffs' argument that Defendants' conduct equitably estopped them from seeking dismissal, reasoning: "[T]he record does not indicate that any of the Defendants selected or requested the September 29, 2025 trial date, or that any of the Defendants affirmatively accepted the date. . . . [T]he indication [on October 24, 2024] by the then-newly retained counsel for Defendants Bank of Hope and Lee that he was considering a motion for summary judgment . . .

does not provide a basis for estoppel: as of October 24, 2024, a motion for summary judgment on full statutory notice could have been heard well in advance of May 18, 2025[5]. Moreover, Defendants I.E. Storm Tech, Chang, and Yeh did not state any intention to bring further motions. With regard to Defendants' participation in discovery, including their service of new discovery, such litigation activity does not operate to estop Defendants from seeking dismissal.” (Fn. omitted.)

The trial court signed an order dismissing the action pursuant to section 583.360, which is an appealable judgment. (§ 581d.) Plaintiffs filed a timely notice of appeal.

DISCUSSION

A. The trial court acted within its discretion by finding that bringing the action to trial within the May 18, 2025 deadline was not impossible, impracticable, or futile.

“In computing the time within which an action must be brought to trial pursuant to this article, there shall be excluded the time during which any of the following conditions existed: [¶] (a) The jurisdiction of the court to try the action was suspended. [¶] (b) Prosecution or trial of the action was stayed or enjoined. [¶] (c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile.” (§ 583.340.)

Plaintiffs concede that absent tolling or extension, the five-year deadline to bring the action to trial expired on May 18, 2025. Plaintiffs argue the trial court abused its discretion by failing to toll the deadline pursuant to section 583.340, subdivision (c), by the period of time between August 5, 2024 (when the trial court vacated the October 28, 2024 trial date and

scheduled a trial-setting conference on that date) and September 29, 2025 (the new, post-deadline trial date that the court set at the trial-setting conference, without objection). Plaintiffs argue bringing the action to trial was impracticable during this period because on August 5, 2024, the trial court vacated the trial date on its own motion, and because at the time of the trial-setting conference on October 28, 2024, the court's next available date for trial was September 29, 2025.

“We review for an abuse of discretion the trial court’s determination not to exclude periods during which plaintiffs contend it was impossible, impracticable or futile to bring the action to trial within the meaning of section 583.340, subdivision (c).” (*Martinez v. Landry’s Restaurants, Inc.* (2018) 26 Cal.App.5th 783, 794, citing *Gaines v. Fidelity National Title Ins. Co.* (2016) 62 Cal.4th 1081, 1100 & fn. 8. (*Gaines*).) “Under that standard, [t]he trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.” (*Gaines*, at p. 1100.) “The question of impossibility, impracticability, or futility is best resolved by the trial court, which “is in the most advantageous position to evaluate these diverse factual matters in the first instance.” ’” (*Ibid.*; see also *id.* at p. 1105 [“Our holding affords due deference to the trial court’s unique ability to determine, based on all of the facts before it, that [a plaintiff] did not demonstrate a circumstance of impossibility, impracticability, or futility”].)

“ ‘ “The critical factor in applying [the impossibility, impracticability, and futility] exceptions to a given factual situation is whether the plaintiff exercised reasonable diligence in prosecuting his or her case.” ’ ” (*Gaines, supra*, 62 Cal.4th at

p. 1100.) “‘[T]here must be “a period of impossibility, impracticability or futility, *over which plaintiff had no control*,” ’ because the statute is designed to prevent *avoidable* delay.” (*Id.* at p. 1102, original italics.) “‘A plaintiff has an obligation to monitor the case in the trial court, to keep track of relevant dates, and to determine whether any filing, scheduling, or calendaring errors have occurred.’” (*Id.* at p. 1104, quoting *Jordan v. Superstar Sandcars* (2010) 182 Cal.App.4th 1416, 1422 (*Jordan*).) “This obligation of diligence increases as the five-year deadline approaches.” (*Jordan*, at p. 1422.)

Here, we conclude the trial court acted within its discretion by finding it was not impossible, impracticable, or futile for Plaintiffs to bring the action to trial between August 5, 2024, and the May 18, 2025 deadline, because during that period, Plaintiffs had means, through the exercise of reasonable diligence, to bring the action to trial within the deadline.

First, Plaintiffs could have brought the action to trial within the May 18, 2025 deadline by objecting, on August 5, 2024 (9.5 months before the deadline), to the trial court’s vacatur of the October 28, 2024 trial date and asking the court to instead *continue* trial to a date within the deadline. Although the trial court vacated the trial date on its own motion, the record suggests the court did so to accommodate the parties’ interests. Indeed, Plaintiffs’ counsel had recently circulated a proposed stipulated order to continue trial based on the parties’ need for additional trial preparation. Nothing in the record establishes that on August 5, 2024, the trial court’s courtroom was unavailable between October 28, 2024, and the deadline. The trial court presumably would have continued trial to a date within the deadline (rather than vacating the trial date) if

Plaintiffs had objected to the vacatur and brought the deadline to the court's attention.

Second, during the 9.5 months between the August 5, 2024 vacatur of the trial date and the May 18, 2025 deadline, Plaintiffs could have brought the action to trial within the deadline by moving to specially set or advance trial. (See Cal. Rules of Court, rule 3.1335.) “[C]ase law establishes that ‘ “[w]here a plaintiff possesses the means to bring a matter to trial before the expiration of the [mandatory dismissal] period by filing a motion to specially set the matter for trial, *plaintiff’s failure to bring such motion will preclude a later claim of impossibility or impracticability.*’ ” ’ ” (*Fidelity National Home Warranty Co. Cases* (2020) 46 Cal.App.5th 812, 853 (*Fidelity*) [collecting cases], original italics; see also *id.* at pp. 852-855 [trial court acted within its discretion by finding its setting post-deadline trial date did not make bringing action to trial within deadline impracticable, because plaintiffs did not object to post-deadline date or move to advance trial].)

Plaintiffs argue a motion to specially set or advance trial would have been futile because on October 28, 2024 (more than six months before the May 18, 2025 deadline), the trial court identified September 29, 2025, as the next available date for trial. At that time, however, Plaintiffs had not brought the deadline to the court's attention. Plaintiffs' duty of reasonable diligence required them to do so. (See *Gaines, supra*, 62 Cal.4th at p. 1104; *Wale v. Rodriguez* (1988) 206 Cal.App.3d 129, 133 (*Wale*) [“ ‘[A]ll plaintiffs are under a continuing duty to correctly compute the statutory five years and to advise the court of the impending deadline.’ [Citation.] Negligently keeping the date a

secret from the court cannot excuse compliance [with the five-year statute]”).)

Had Plaintiffs brought the deadline to the trial court’s attention by moving to specially set or advance trial, the court presumably would have set the matter for trial within the deadline, even if doing so required the court to order a continuance in another case. (See *De Santiago v. D & G Plumbing, Inc.* (2007) 155 Cal.App.4th 365, 374 (*De Santiago*) [“[Plaintiff-intervenor] had a duty to bring to the trial court’s attention the fact that the trial court set the trial for a date after expiration of the five-year period, and object. Upon becoming aware of the impending expiration of the five-year period, the trial court in all likelihood would have given the case priority for the purpose of trying the case before the five-year period expired”]; *Jordan, supra*, 182 Cal.App.4th at p. 1422 [“Plaintiffs failed to establish that, had they been reasonably diligent and requested their case be tried before the five-year period ran . . . , their case would not have been tried”].)

Without having brought the deadline to the trial court’s attention, Plaintiffs were not entitled to assume the court would deny a motion to specially set or advance trial on the ground of courtroom unavailability. Because they made no such motion, the trial court acted within its discretion by rejecting their claim that bringing the action to trial within the deadline was impossible, impracticable, or futile. (See *Wale, supra*, 206 Cal.App.3d at pp. 131, 133 [where trial court set post-deadline trial date, plaintiff requested earlier date without bringing five-year deadline to court’s attention, and “the clerk stated that no earlier date was available,” plaintiff “was not entitled to assume

that a motion to specially set would have been futile,” and “[h]is failure to so move was fatal”].)

Plaintiffs argue they brought the five-year deadline to the trial court’s attention in April 2021. They rely on their counsel’s April 2021 email to the attorney then representing Defendants, which email cited authority to explain that Innerline’s bankruptcy did not extend the time for Defendants to answer the complaint, and parenthetically described one case as upholding a dismissal under the five-year statute. Nothing in the record, however, indicates the trial court received that email. In any event, the email did not mention the May 18, 2025 deadline, and Plaintiffs sent the email more than three years before the trial court vacated the October 28, 2024 trial date. We conclude the email did not satisfy Plaintiffs’ duty of reasonable diligence to bring the deadline to the trial court’s attention during the 9.5 months between the August 5, 2024 vacatur of the trial date and the May 18, 2025 deadline.

Plaintiffs’ reliance on *Coe v. City of Los Angeles* (1994) 24 Cal.App.4th 88 and *Goers v. Superior Court* (1976) 57 Cal.App.3d 72 is misplaced. In *Coe*, the trial court “knowingly” continued trial to a date beyond the five-year deadline—“apparently making a *conscious* choice at that time that this matter would be dismissed”—and subsequently denied, for “no good reason,” the plaintiffs’ two applications to advance trial. (*Coe*, at p. 92, italics added.) In *Goers*, the trial court continued a timely trial date because no courtroom or judge was available, and although the parties agreed to extend the deadline beyond the new trial date (apparently bringing the deadline to the trial court’s attention), additional court-ordered continuances due to court congestion made it impossible to bring the action to trial

within the extended deadline. (*Goers*, at pp. 74-75.) Here, in contrast, Plaintiffs never brought the five-year deadline to the trial court’s attention, did not object when the court vacated the October 28, 2024 trial date (for reasons unrelated to courtroom availability) or when the court subsequently set a post-deadline trial date, and did not move to specially set or advance trial.

Plaintiffs cite *Chin v. Meier* (1991) 235 Cal.App.3d 1473 for the following propositions: “A court-ordered continuance makes it impossible or impractical for a plaintiff to proceed to trial. Such an occurrence is not reasonably within the plaintiff’s control.” (*Id.* at p. 1478.) *Chin*, however, did not consider whether a court-ordered continuance precludes a trial court from determining, in its discretion, that bringing an action to trial was not impossible, impracticable, or futile during the period covered by the continuance because a reasonably diligent plaintiff could have brought the action to trial within that period by bringing the deadline to the court’s attention, objecting, and/or moving to specially set or advance trial.⁶ “[C]ases are not authority for propositions not considered.” (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1160.)

In short, we conclude the trial court acted within its discretion by finding that section 583.340, subdivision (c), did not toll the May 18, 2025 deadline because bringing the action to

⁶ Indeed, *Chin* did not mention diligence, which the Supreme Court has since recognized as “ ‘[t]he critical factor in applying [the impossibility, impracticability, and futility] exceptions to a given factual situation’ ” (*Gaines, supra*, 62 Cal.4th at p. 1100; see also *De Santiago, supra*, 155 Cal.App.4th at p. 376 [declining to follow *Chin* because *Chin* did not consider diligence].)

trial between August 5, 2024, and the deadline was not impossible, impracticable, or futile.

B. The trial court correctly concluded the parties did not extend the May 18, 2025 deadline by oral agreement.

“The parties may extend the time within which an action must be brought to trial pursuant to this article by the following means: [¶] (a) By written stipulation. . . . [¶] (b) By oral agreement made in open court, if entered in the minutes of the court or a transcript is made.” (§ 583.330.) Pursuant to section 583.330, subdivision (b), parties may extend the deadline by orally agreeing in open court to “postpone trial to a specific date beyond the statutory period.” (*Nunn v. JPMorgan Chase Bank, N.A.* (2021) 64 Cal.App.5th 346, 356 (*Nunn*).)

Here, the parties undisputedly did not execute any written stipulation to extend the May 18, 2025 deadline to bring the action to trial. Plaintiffs argue that during the October 28, 2024 trial-setting conference, the parties orally agreed to the post-deadline trial date of September 29, 2025, thereby extending the deadline to that date pursuant to section 583.330, subdivision (b). Plaintiffs argue the alleged agreement was “entered in the minutes of the court” on October 28, 2024, and subsequently memorialized in the settled statement concerning that date (satisfying the alternative statutory requirement that “a transcript [wa]s made”).⁷

⁷ Defendants do not dispute that a settled statement can substitute for a transcript for the purpose of satisfying section 583.330, subdivision (b). (See Cal. Rules of Court, rule 8.137(a); *Nunn, supra*, 64 Cal.App.5th at pp. 356-360.)

The minute order and the settled statement indicate that the trial court set the September 29, 2025 trial date “[a]fter conferring with the parties” (who appeared through their counsel). Neither document, however, indicates that defense counsel agreed to the September 29, 2025 trial date. Although both documents indicate that counsel for the Lee Defendants informed the trial court those defendants might file a motion for summary judgment, they do *not* indicate that defense counsel requested a later trial date to accommodate the potential motion or that the court selected the September 29, 2025 trial date for that purpose. In the dismissal order, the trial court found that “as of October 24, 2024, a motion for summary judgment on full statutory notice could have been heard well in advance of” the May 18, 2025 deadline. Plaintiffs do not address that finding.

Even assuming, *arguendo*, we may infer from the trial court’s selecting the trial date “[a]fter conferring with the parties” that defense counsel did not object to that date, the absence of an objection is insufficient to establish an agreement to extend the deadline. (See *Boyd v. Southern Pac. R. Co.* (1921) 185 Cal. 344, 347 (*Boyd*) [“the mere failure of the defendant to object to setting the cause for trial . . . would n[ot] constitute a consent or agreement to try the case at the time set”]; *Randolph v. Trustees of California State University* (2025) 117 Cal.App.5th 1228, 1234 (*Randolph*) [“We decline to create new law that when a minute order [setting a new, post-deadline trial date] is *silent* as to any discussion relating to the trial date, a court may infer that a defendant *expressly* agreed to the new trial date, thereby entering into an oral stipulation under section 583.330, subdivision (b)” (original italics)].)

Plaintiffs attempt to buttress the minute order and settled statement by citing the declarations that defense counsel submitted to support Defendants’ motions to dismiss, which declarations described counsel’s recollection of the proceedings on October 28, 2024. We disregard Plaintiffs’ citations to those declarations. By allowing parties to extend the deadline by oral agreement “made in open court” *only* “if [the agreement is] entered in the minutes of the court or a transcript is made” (§ 583.330, subd. (b)), the statute evinces the Legislature’s intent to preclude parties from relying on declarations describing post hoc recollections of the oral proceedings. (See *Randolph, supra*, 117 Cal.App.5th 1233 & fn. 3 [noting and implicitly disregarding appellant’s citation to counsel’s declaration that parties had orally agreed to post-deadline trial date].)

In any event, defense counsel’s declarations did not indicate that they requested or agreed to the September 29, 2025 trial date. Instead, the declarations indicated only that defense counsel did not object to that date. As noted, the absence of an objection is insufficient to establish an agreement to extend the deadline. (See *Boyd, supra*, 185 Cal. at p. 347; *Randolph, supra*, 117 Cal.App.5th at p. 1234.)

Plaintiffs’ reliance on *Nunn, supra*, 64 Cal.App.5th 346, is misplaced. In that case, the last day to bring the action to trial was July 18, 2019. (*Id.* at p. 351.) The defendants’ case management statement advised the trial court they intended to complete discovery “by ‘Summer 2019’ ” (possibly after the July 18, 2019 deadline for trial) and to file a motion for summary judgment before trial. (*Ibid.*) The settled statement of a telephonic case management conference stated: “The court suggested [setting trial in] November 2019, but [*defense counsel*]

indicated November would be too early because defendants intended to file a summary judgment motion and needed to take the plaintiffs' depositions before filing that motion. [¶] The court then proposed a trial for January 13, 2020. The lawyers both indicated to the court that they had no objection to the trial being set on January 13, 2020.” (*Id.* at p. 356, italics added.) After the deadline to bring the action to trial expired, the trial court dismissed the action. (*Id.* at p. 352.)

The appellate court reversed (*Nunn, supra*, 64 Cal.App.5th at p. 364), concluding the “interchange” that the settled statement described “constitute[d] an oral agreement within the meaning of section 583.330” (*id.* at p. 356). The court rejected the defendants' argument that they merely acquiesced in the trial date, explaining: “The [trial] court proposed a January 2020 trial date *to accommodate the interests of the [defendants]*, as expressed first in their case management conference statement and then at the telephonic conference In particular, *the [defendants'] lawyer, having just rejected the court's proposal of a date in November 2019 as premature*, ‘indicated’ that the January 2020 date was acceptable; he had no objection to the later date.” (*Id.* at p. 357, italics added; see also *id.* at p. 359 [“the settled statement show[ed] that the [defendants] explicitly asked for a trial date after November 2019 (i.e., beyond the statutory deadline)”].) “[T]he settled statement recount[ed] words and actions by the parties that constitute[d] objective evidence of an agreement to set the trial for a specific date” beyond the deadline. (*Id.* at p. 359.)

Here, in contrast to the settled statement in *Nunn*, the minute order and the settled statement recount *no* words or actions by defense counsel related to the trial date. (See

Randolph, supra, 117 Cal.App.5th at p. 1234 [“In contrast to the settled statement in *Nunn*, the minute order at issue here does *not* reflect any discussion regarding the trial date and, accordingly, it does not show any mutual assent to extend the statutory deadline to bring the action to trial”].) Neither document indicates that the trial court proposed a post-deadline trial date “to accommodate the interests of” Defendants, much less that defense counsel “explicitly asked for” a post-deadline trial date. (*Nunn, supra*, 64 Cal.App.5th at pp. 357, 359.) Because *Nunn*’s holding was based on such an affirmative request, not on the mere absence of an objection, “*Nunn* does *not* stand ‘for the proposition that “no objection” to a trial date that would be after the statutory deadline[] is sufficient to create an oral stipulation’” (*Randolph*, at p. 1234.)

Plaintiffs purport to quote *Munoz v. City of Tracy* (2015) 238 Cal.App.4th 354 as stating: “[T]he trial court’s announcement of a trial date, acquiesced in by the parties, is an oral agreement in open court that extends the deadline.” That language does not appear in *Munoz*. *Munoz* held that the parties extended the five-year deadline pursuant to section 583.330, subdivision (a), by executing a *written stipulation* to continue trial to a date beyond the deadline. (*Id.* at pp. 360-362.) *Munoz* did not consider whether the parties made any *oral* agreement that would have extended the deadline pursuant to section 583.330, subdivision (b). As noted, “‘cases are not authority for propositions not considered.’” (*Sonic-Calabasas A, Inc. v. Moreno, supra*, 57 Cal.4th at p. 1160.)

In sum, the trial court correctly concluded the parties did not extend the deadline by oral agreement pursuant to section 583.330, subdivision (b).

C. Substantial evidence supports the trial court’s finding that Defendants’ conduct did not estop them from seeking dismissal.

Plaintiffs argue the trial court erred by rejecting Plaintiffs’ argument that Defendants’ conduct equitably estopped Defendants from seeking dismissal.

“Nothing in this chapter [governing dismissal for delay in prosecution] abrogates or otherwise affects the principles of waiver and estoppel.” (§ 583.140.) “Equitable estoppel requires that: (1) the party to be estopped was aware of the operative facts and either intended that its act or omission be acted upon, or acted in such a way that the party asserting estoppel rightfully believed it was intended; and (2) the party asserting estoppel was unaware of the facts and relied on the other party’s conduct to its detriment.” (*Gaines, supra*, 62 Cal.4th at p. 1097.) “The party asserting estoppel has the burden to establish these elements.” (*Ibid.*) “[E]stoppel is shown only if the detrimental reliance was reasonable.” (*Santa Clara Valley Water Dist. v. Century Indemnity Co.* (2023) 89 Cal.App.5th 1016, 1053; see also *In re Marriage of Kelkar* (2014) 229 Cal.App.4th 833, 847; *Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1152.)

We review the trial court’s rejection of Plaintiffs’ estoppel argument for substantial evidence. (*Gaines, supra*, 62 Cal.4th at p. 1098.) “We may not substitute our decision for that of the trial court. The issue is not . . . whether consideration of appellant’s evidence could reasonably have led the lower court to conclude respondent should be estopped from seeking dismissal. Rather, the issue is whether, viewing the evidence and all inferences therefrom in the light most favorable to respondent,

there was substantial evidence upon which the court could reasonably have found as it did [i.e., that the respondent was not estopped from seeking dismissal].” (*Brookview Condominium Owners’ Assn. v. Heltzer Enterprises-Brookview* (1990) 218 Cal.App.3d 502, 511 (*Brookview*).)

Here, we conclude substantial evidence supports the trial court’s finding that Plaintiffs failed to meet their burden to prove the elements of equitable estoppel. Indeed, Plaintiffs identify no evidence that they relied on any conduct by Defendants in failing to bring the action to trial within the May 18, 2025 deadline. Plaintiffs’ counsel’s declarations in opposition to the motions to dismiss did not claim that Plaintiffs misunderstood the five-year deadline, the necessity of bringing the action to trial within the deadline, or the means available to them to do so—much less that any conduct by Defendants misled Plaintiffs regarding those matters. (See *Boyd, supra*, 185 Cal. at p. 347 [estoppel could not bar defendant from seeking dismissal for failure to bring action to trial within five years absent “a consent or agreement to try the case at the time set []or [conduct] amount[ing] to a misleading of the plaintiff”].)

Nor did the declarations claim that Plaintiffs relied on the specific conduct that Plaintiffs’ appellate briefs cite in support of estoppel. As explained below, even assuming, *arguendo*, Plaintiffs did rely on that conduct, the trial court reasonably could have found that their reliance was unreasonable and did not support estoppel. (See *Jordan, supra*, 182 Cal.App.4th at p. 1423 [“Plaintiffs have shown no conduct on the part of defendants that would have lulled plaintiffs into a *reasonable* false sense of security [regarding dismissal pursuant to the five-year statute]. Since the evidence supports the finding of the

trial court, we must accept its determination that the doctrine of equitable estoppel did not apply in this case” (*italics added*)).

First, Plaintiffs argue Defendants are estopped from seeking dismissal because on October 21, 2024 (one week before the trial court set the September 29, 2025 trial date, without objection), Defendants approved the form of a proposed pretrial scheduling order that contained blank spaces for various pretrial dates. Without explanation, Plaintiffs assert the proposed order “contemplated trial beyond the deadline.” The proposed order, however, did not address the trial date or the five-year deadline. Plaintiffs could not reasonably rely on Defendants’ approval of the proposed order’s form in failing to bring the action to trial within the deadline.

Next, Plaintiffs argue Defendants are estopped from seeking dismissal because the Lee Defendants indicated during the October 28, 2024 trial-setting conference that they might file a motion for summary judgment. Plaintiffs do not explain how the Lee Defendants’ conduct could estop the *IEST* Defendants (who did not reference any potential motion) from seeking dismissal. As for estoppel against the Lee Defendants, as noted, they did not request a later trial date to accommodate their potential summary judgment motion, and Plaintiffs ignore the trial court’s finding that “as of October 24, 2024, a motion for summary judgment on full statutory notice could have been heard well in advance of” the May 18, 2025 deadline. Because the potential motion could have been heard within the deadline (the Lee Defendants never suggested otherwise), Plaintiffs could not reasonably rely on the Lee Defendants’ reference to the potential motion in failing to bring the action to trial within the deadline.

Finally, Plaintiffs argue Defendants are estopped from seeking dismissal because Defendants continued litigating the case *after* the May 18, 2025 deadline expired. By the time Defendants engaged in that post-deadline litigation conduct, however, Plaintiffs already had failed to bring the action to trial within the deadline. Plaintiffs could not have relied on that conduct in failing to meet the deadline.

Moreover, Plaintiffs identify no evidence that Defendants intended Plaintiffs to perceive, or that Plaintiffs reasonably could have perceived, Defendants' continued participation in the litigation as a manifestation of Defendants' intent not to seek dismissal. Defendants moved for dismissal about 2.5 months after the deadline expired. The defense attorneys' declarations explained that they did not seek dismissal earlier because (1) the IEST Defendants' attorney erroneously believed that a COVID-19 emergency rule extended the five-year deadline by six months; and (2) the Lee Defendants' attorney, who substituted in for previous counsel late in the litigation, erroneously believed that Innerline's bankruptcy had stayed the action as to *all* defendants (which would have tolled the deadline). After Plaintiffs began taking their first depositions in July 2025, the Lee Defendants' attorney discovered his error and immediately communicated his intent to move for dismissal to all parties.

That evidence reasonably supports a finding that Defendants did not intend for their continued participation in the litigation for 2.5 months after the deadline expired to communicate to Plaintiffs that Defendants would not seek dismissal. To the extent Plaintiffs merely assumed Defendants would not seek dismissal, the assumption was unreasonable. (See *Jordan, supra*, 182 Cal.App.4th at p. 1423 ["it was not

reasonable to assume defendants were willing to waive the deadline. . . . Any ambiguity or confusion created by defense counsel mentioning his unavailability [for trial] beyond the cutoff date could have been clarified by plaintiffs' counsel, who was responsible for ensuring the case was tried before the five-year period expired"].)

Plaintiffs' reliance on *Tresway Aero, Inc. v. Superior Court* (1971) 5 Cal.3d 431 is misplaced. In that case, the plaintiff reasonably relied on the defendant's request for an extension of time to answer the complaint, which request "led plaintiff to believe that further service of process on defendant would be duplicatory and redundant," (*id.* at p. 441) "effectively prevented plaintiff from discovering [a] defect in service" of the summons, and thereby "resulted in plaintiff's failure to serve summons within the [three-year] period required by [former] section 581a." (*Id.* at pp. 433, 441.) The trial court found that the defendant's extension request estopped the defendant from seeking dismissal, and the Supreme Court upheld that finding on writ review. (*Id.* at p. 433.) The court distinguished cases in which defendants requested extensions *after* the deadline had expired, on the ground that in those cases, the defendants' extension requests "played no role in inducing plaintiff not to effect service of summons within the statutory period." (*Id.* at p. 441, fn. 17.)

Here, unlike the defendant's extension request in *Tresway*, Defendants' conduct did not reasonably mislead Plaintiffs in a manner that induced Plaintiffs to fail to meet the deadline. Further, unlike the trial court in *Tresway*, the trial court in this case rejected estoppel. "We may not substitute our decision for that of the trial court." (*Brookview, supra*, 218 Cal.App.3d at p. 511.)

In short, we conclude substantial evidence supports the trial court's finding that Defendants' conduct did not estop them from seeking dismissal.

D. The general policy favoring trial on the merits does not warrant reversal of the mandatory dismissal.

"It is the policy of the state that a plaintiff shall proceed with reasonable diligence in the prosecution of an action Except as otherwise provided by statute or by rule of court adopted pursuant to statute, the policy favoring the right of parties to make stipulations in their own interests and the policy favoring trial or other disposition of an action on the merits are generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in the prosecution of an action in construing the provisions of this chapter [governing mandatory and discretionary dismissal for delay in prosecution]." (§ 583.130.) "This statement of policy is by its own description a general statement subject to contrary statutory provisions." (*Scarzella v. DeMers* (1993) 17 Cal.App.4th 1762, 1771.)

Plaintiffs contend that even if we reject their arguments regarding tolling, extension, and estoppel (as we have), we must reverse the judgment of dismissal to effectuate section 583.130's directive that in construing the statutes governing mandatory and discretionary dismissal for delay in prosecution, courts must "generally" prefer the policy favoring trial on the merits over the policy requiring dismissal.

Plaintiffs, however, cite no authority—and we are aware of none—suggesting that the general policy favoring trial on the merits may preclude mandatory dismissal where, as here, a plaintiff fails to bring the action to trial within five years, the

five-year deadline was not tolled by statute or extended by agreement, and estoppel does not bar the defendant from seeking dismissal. “An action *shall* be dismissed by the court . . . if the action is not brought to trial within the time prescribed in this article [governing mandatory dismissal for failure to bring an action to trial within five years].” (§ 583.360, subd. (a), italics added.) “The requirements of this article are *mandatory* and are not subject to extension, excuse, or exception except as expressly provided by statute.” (§ 583.360, subd. (b), italics added.) Section 583.130 does not expressly provide any extension, excuse, or exception that could preclude mandatory dismissal.

In sum, we conclude the trial court properly dismissed the action pursuant to section 583.360. “While this conclusion brings an end to [the] suit, that is what the five-year statute is designed to do. The five-year rule is mandatory and dismissal for noncompliance is required.” (*Gaines, supra*, 62 Cal.4th at p. 1105.)

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

NOT TO BE PUBLISHED



M. KIM, J.

We concur:



BENDIX, Acting P. J.



WEINGART, J.