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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

PAMELA NICHOLSON,

Plaintiff and Appellant,

v.

CENTEX HOMES,

Defendant and Respondent.

B234233

(Los Angeles County
Super. Ct. No. BC423703)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Randy Rhodes, Judge. Affirmed.

Pamela Nicholson, in pro. per., for Plaintiff and Appellant.

Gibbs, Giden, Locher, Turner & Senet, Theodore L. Senet, Gary E.
Scalabrini and Sara H. Kornblatt for Defendant and Respondent.

Pamela Nicholson, in propria persona, appeals from the judgment entered in favor of Centex Homes after the trial court granted respondent's motion for summary adjudication, pursuant to the statute of limitations in Code of Civil Procedure section 337.15, and its motion for terminating sanctions, pursuant to Code of Civil Procedure sections 2023.010, 2023.030, and 2025.450.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND²

On June 3, 1999, appellant and respondent entered into a real estate sales contract for a home built by respondent at Lot 184, Tract 49761, on Thackery Lane in Stevenson Ranch, California. An inspection record by the Los Angeles County Department of Public Works Building and Safety Division indicates that final approvals of the home were made on September 23, 1999. On October 7, 1999, respondent filed a Notice of Completion in the Los Angeles County Recorder's Office, stating that the home was completed on September 23, 1999. On October 14, 1999, escrow closed, and the property was transferred by grant deed to appellant and her sister.

Shortly after moving in, appellant had plumbing and other problems with the home that she alleged were due to construction defects. According to appellant, toilet leaks led to mold and sewage water damage that eventually forced her and her family to move out and rent a smaller house for six years. Appellant alleged that her nephew developed asthma, and she and her family developed respiratory problems because of the mold. She further alleged that respondent knew that the toilet leaks were caused by defects in the water pressure regulator and wax seals, as

¹ All further statutory references are to the Code of Civil Procedure.

² We take our summary of the facts from appellant's complaint in this action.

well as workmanship that violated the construction code, but respondent concealed this from her. A few months after moving in, appellant also discovered defects in the heating and electrical work, paint job, and a window seal, resulting in mold around the window. According to appellant, respondent fixed the electrical and heating defects, but never fixed the other problems.

Numerous other problems arose between 2002 and 2007, such as sewer problems and leaks in the garage, leading appellant to contact the Department of Sanitation, the Department of Building and Safety, and the Contractors State Licensing Board. According to appellant, the representative from the Contractors State Licensing Board discovered numerous other problems. Appellant contacted respondent numerous times over the years and sent lists of alleged construction defects, as well as inspection reports and estimates of repair costs by the Contractors State License Board. She alleged that respondent repeatedly promised to make repairs but never did, deliberately concealed facts, and lied to her in order to induce her not to file suit until the statute of limitations had run.

Appellant further alleged that she was contacted by an attorney in 2006 regarding a class action being brought by her neighbors against respondent, but respondent induced her not to participate in the lawsuit by sending her letters promising to repair the damage.³ In April 2006, respondent sent appellant a letter and a brochure, warning of “the many pitfalls of construction defect litigation,” and asking for the opportunity to investigate if there were problems with the home. Appellant alleged that she exchanged correspondence with respondent for several years and made repairs to the home in an attempt “to make the house habitable.”

³ A lawsuit against respondent by residents in appellant’s neighborhood, alleging construction defects at 26 homes, resulted in a settlement.

After her communications with respondent did not resolve her complaints, on October 14, 2009, appellant filed a complaint against respondent, alleging fraud, general negligence, common counts, products liability, and intentional tort.

In June 2010, respondent propounded special interrogatories and demands for inspection of documents on appellant. After appellant failed to provide complete responses and produce all the requested documents, in October 2010, respondent filed a motion to compel responses and further production of documents and requested monetary sanctions. In December 2010, the trial court granted the motion to compel written responses but denied the motion for further production of documents as premature until appellant provided written responses. Appellant was ordered to serve her written responses by December 30, 2010. The court ordered \$630 in sanctions and then ordered them stricken, but reserved the right to reinstate them if appellant delayed her discovery responses in the future.

On December 3, 2010, respondent filed a motion for summary adjudication as to appellant's general negligence, common counts, products liability, and intentional tort causes of action, on the basis that the action was barred by the statute of limitations.

Mediation took place on December 16, 2010, but did not result in a settlement.

On January 4, 2011, respondent sent appellant two letters stating that most of her responses did not comply with statute or the court's order to serve written responses without objection. Appellant replied on January 14, 2011, that she could not respond in time because she was waiting for respondent's responses. She further explained that after she granted respondent an extension of time to January 18, 2011, to respond to her special interrogatories, she thought her own deadline was extended to January 31, 2011.

On April 4, 2011, the trial court granted respondent's motion to compel further responses to demand for inspection and its motion to compel further response to special interrogatories. The court awarded sanctions in the amount of \$2,475 for the first motion and \$1,905 for the second. The court also gave appellant additional time to submit newly discovered evidence in opposition to respondent's summary adjudication motion and continued the hearing. The court subsequently denied appellant's motions for reconsideration of the sanctions and the rulings on respondent's motions to compel.

On April 7, 2011, the trial court denied appellant's motion for a protective order limiting discovery.

Respondent filed three motions to compel – first, further response to form interrogatories; second, deposition of appellant; and third, inspection of appellant's residence. On April 26, 2011, the trial court granted all three motions and awarded and waived \$1,500 in sanctions. The court ordered the inspection of appellant's residence on May 6, 2011, and ordered appellant's deposition on May 9, 2011. At the April 26, 2011 hearing on the motions to compel, appellant repeatedly objected to the inspection and the deposition, but the court explained that respondent had a right to both and told her that if she did not appear for the deposition, she would be in violation of a court order.

On May 11, 2011, respondent filed an ex parte application for an order imposing terminating sanctions for appellant's failure to appear for her May 9, 2011 deposition and to obey the court's order compelling the deposition. Respondent's counsel stated that appellant arrived at 11:15 a.m. for her 10:00 deposition, started to walk into the conference room, and then refused to be deposed, despite counsel's warning that she would be in violation of the court's order.

On May 12, 2011, appellant's peremptory challenge to the judge pursuant to section 170.6 was denied as untimely.

After a hearing on May 20, 2011, the trial court granted respondent's motion for summary adjudication as to the general negligence, common counts, products liability, and intentional tort causes of action, but not the fraud cause of action. The court found that these claims were barred by the 10-year statute of limitations found in section 337.15, equitable tolling did not apply, and appellant had failed to plead facts to show respondent should be equitably estopped from asserting the statute of limitations. The court stated that undisputed evidence showed substantial completion of her home on September 23, 1999, and that the action was not filed until October 14, 2009, more than 10 years later. The court also found that there was no evidence to show that respondent induced appellant not to timely file the lawsuit, reasoning that appellant admitted that she tried to obtain legal counsel within the limitations period but was unable to afford to hire an attorney. The court therefore ordered judgment entered in favor of respondent on all but the fraud cause of action.

Appellant filed an ex parte motion to either shorten or extend the time for respondent to respond to her discovery requests, and to "extend the trial and discovery cut off dates," arguing that respondent had not provided her with meaningful discovery.

On June 2, 2011, the trial court held a hearing on respondent's motion for terminating sanctions. The court indicated its willingness to give appellant the opportunity to present her case, but reiterated that respondent had the right to take her deposition and videotape it. The court therefore told appellant that if she agreed to attend the deposition and allow respondent to videotape it, the case would continue, but if she refused, the case would be dismissed for her failure to

comply with the court's orders. After appellant stated that the deposition would be "under duress and coercion," the court granted respondent's motion on the basis that appellant had "intentionally and willfully disobeyed the court's order of 4-26-11 by failing to have her deposition taken." The court therefore ordered the entire action to be dismissed. Judgment was entered in favor of respondent, and respondent was awarded costs.

DISCUSSION

Appellant contends that the trial court erred in dismissing the case. She challenges the trial court's orders granting the motions for terminating sanctions and monetary sanctions, the order granting respondent's summary adjudication motion, the court's evidentiary rulings, and the court's rulings regarding the parties' motions to compel discovery.

I. Sanctions for Discovery Violations

Appellant challenges the order granting terminating sanctions for her failure to comply with the court order that she allow respondent to take and videotape her deposition. She argues that it was not she who refused to comply with the court's discovery order, but respondent, by requiring that the deposition be videotaped, instead of taking a "normal" deposition.

"A court, after notice and an opportunity for a hearing, may impose sanctions on a party, person, or attorney for misuse of the discovery process. (§ 2023.030.) Section 2023.030 describes the types of sanctions that a court may impose, including monetary, issue, evidence, terminating, and contempt sanctions. (*Id.*, subs. (a)–(e).) [Citation.]" (*Kayne v. The Grande Holdings Limited* (2011) 198 Cal.App.4th 1470, 1475.)

“We review an order imposing discovery sanctions under the abuse of discretion standard. [Citation.] An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court’s decision exceeds the bounds of reason and results in a miscarriage of justice. [Citations.] The abuse of discretion standard affords considerable deference to the trial court, provided that the court acted in accordance with the governing rules of law. “The discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown. [Citation.]” [Citations.]’ [Citation.]” (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1422.)

A. Terminating Sanctions

“A decision to order terminating sanctions should not be made lightly. But where a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction.’ [Citation.]” (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 992 (*Doppes*), fn. omitted.)

The trial court did not abuse its discretion in imposing the terminating sanctions. Appellant already had failed to appear for a deposition on February 18, 2011, which led to respondent’s motion to compel her deposition. Section 2025.220 requires a deposition notice to state “[a]ny intention by the party noticing the deposition to record the testimony by audio or video technology, . . .” (§ 2025.220, subd. (a)(5).) Respondent’s deposition notice, sent to appellant on

February 2, 2011, regarding the February 18 deposition, indicated respondent's intent to record the deposition by audio or video technology.

Appellant relies on the trial court's statement that she was to "give a normal 2025 deposition" during the hearing at which the court ordered her to give the deposition. She argues that the use of the word "normal" indicated that the deposition was not to be videotaped, but the record does not support her contention. The court's statement was in response to appellant's query whether she could provide a written, rather than oral deposition, and was not a prohibition on videotaping the deposition.

Before imposing the terminating sanctions, the court explained to appellant that she needed to comply with its order to allow respondent to take and videotape her deposition. Even after these repeated explanations, the court offered appellant another opportunity to comply with the order, but when she stated that she would comply "under duress and coercion," the court granted respondent's motion. Given appellant's history of discovery abuse, the court was entitled to infer from her failure to give an unequivocal "yes" to its order that she allow respondent to take her deposition that she again would not comply with the order. The record shows that appellant's violation was willful and preceded by a history of abuse, and that less severe sanctions would not produce compliance. (*Doppes, supra*, 174 Cal.App.4th at p. 992.) The trial court was justified in ordering terminating sanctions for appellant's failure to comply with the order regarding her deposition.

B. Monetary Sanctions

Appellant also contends that the trial court abused its discretion in ordering monetary sanctions against her. The trial court ordered monetary sanctions against Nicholson for discovery violations several times. On December 10, 2010, the

court ordered and then waived \$630 in sanctions. On April 4, 2011, the court awarded sanctions of \$2,475 and \$1,905, and on April 26, 2011, the court ordered and waived \$1,500 in sanctions.

The record indicates that, each time the court imposed sanctions, the court listened to appellant's arguments and carefully explained everything to her. The court also took into consideration her situation when deciding to waive the monetary sanctions. There was no abuse of discretion in the court's rulings.

II. Summary Adjudication

Appellant challenges the trial court's grant of respondent's motion for summary adjudication, arguing that the statute of limitations does not bar her causes of action. "Summary adjudication is proper if the papers submitted show there is no triable issue as to any material fact and the moving party is entitled to prevail on a cause of action as a matter of law. [Citations.] A defendant moving for summary adjudication bears the initial burden to show the cause of action has no merit, i.e., 'that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action.' (. . . § 437c, subd. (p)(2).) If the defendant meets this burden, 'the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists' [Citation.]

"We review a summary adjudication order de novo. [Citation.] We strictly construe the moving party's evidence and liberally construe the evidence favoring the party opposing the motion. [Citation.] We resolve all doubts in favor of the opposing party. [Citation.] We affirm an order granting summary adjudication if it is legally correct on any ground raised in the trial court proceedings. [Citation.]" (*Kight v. CashCall, Inc.* (2011) 200 Cal.App.4th 1377, 1386-1387.)

Section 337.15 provides that “[n]o action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for . . . [¶] (1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property. [¶] (2) Injury to property, real or personal, arising out of any such latent deficiency.” (§ 337.15, subd. (a).) “The 10-year period specified in subdivision (a) shall commence upon substantial completion of the improvement, but not later than the date of one of the following, whichever first occurs: [¶] (1) The date of final inspection by the applicable public agency. [¶] (2) The date of recordation of a valid notice of completion. [¶] (3) The date of use or occupation of the improvement. [¶] (4) One year after termination or cessation of work on the improvement.” (*Id.*, subd. (g).) “Thus, section 337.15 imposes “an absolute requirement that a suit . . . to recover damages for a [latent] construction defect be brought within 10 years of the date of substantial completion of construction, regardless of the date of discovery of the defect.” [Citation.]” (*Gundogdu v. King Mai, Inc.* (2009) 171 Cal.App.4th 310, 314 (*Gundogdu*).

Respondent proffered evidence that the 10-year limitations period began on September 23, 1999, when the final inspection was completed, or at the latest, when the notice of completion was recorded on October 7, 1999.

Appellant argues that the limitations period did not begin with the September 23, 1999 final inspection because omissions on the final inspection report regarding, for example, the framing, indicate that the inspection report was

incomplete.⁴ We disagree. Although there are some blank spaces in the inspection record, all the final approvals were signed off. Moreover, the date on the final inspection report is supported by the notice of completion that respondent filed with the Los Angeles County Recorder's Office on October 7, 1999, which indicates that appellant's home was completed on September 23, 1999. Appellant has provided no evidence that this is not a valid notice of completion within the meaning of section 337.15, subdivision (g). The statute of limitations accordingly began to run on September 23, 1999.

Appellant further contends that the limitations period did not begin because the notice of completion indicates that Centex Homes was the owner of record at the time, not her. She relies on section 337.15, subdivision (e), which provides: "The limitation prescribed by this section shall not be asserted by way of defense by any person in actual possession or the control, as owner, tenant or otherwise, of such an improvement, at the time any deficiency in the improvement constitutes the proximate cause for which it is proposed to bring an action."

Appellant's argument is foreclosed by precedent addressing section 337.15, subdivision (e). "All contractors, developers, etc. are in control of the project at some stage of its development and [appellant's] application of the subdivision would deny them the defense intended." (*Eden v. Van Tine* (1978) 83 Cal.App.3d 879, 886; *Gundogdu, supra*, 171 Cal.App.4th at p. 315 [rejecting the plaintiffs' argument that the statute of limitations was unavailable because of the developer's "passive ownership of the property prior to its sale"].)

⁴ Appellant argues that the notice of completion was not valid because of the lawsuit against respondent by other homeowners in her neighborhood, which she contends establishes that the notice of completion was invalid. The fact that appellant's neighbors sued respondent within the limitations period does not mean that the notice of completion was not valid.

Appellant also argues that the limitations period does not apply because respondent has admitted to committing fraud. Section 337.15 “shall not apply to actions based on willful misconduct or fraudulent concealment.” (§ 337.15, subd. (f).) Because willful misconduct or fraudulent concealment is an exception to the affirmative defense of the 10-year limitations period, appellant bears the burden of producing sufficient evidence to raise a triable issue of material fact as to whether respondent’s actions were based on willful misconduct. (*Acosta v. Glenfed Development Corp.* (2005) 128 Cal.App.4th 1278, 1293 (*Acosta*).)

Appellant relies on the statement in *Acosta* that “[a] developer of mass-produced homes is strictly liable for defects in the construction of such homes. [Citation.]” (*Acosta, supra*, 128 Cal.App.4th at p. 1297.) The context of this statement, however, was the court’s discussion regarding the liability of a developer/general contractor for the work of subcontractors. The opinion reasoned: “Although subcontractors may be independent contractors when working for the general contractor or the owner of property on which mass-produced residential units are being built, the owner or the general contractor is still liable for damages caused by defects in such work. [Citation.] . . . [¶] The obvious reason for this rule is that owners and general contractors have supervision over the construction, including the work of the subcontractors.” (*Id.* at pp. 1297-1298.)

Acosta addressed the willful misconduct exception of section 337.15, subdivision (f) and concluded that “defendants may not successfully assert the 10-year limitations period set out in section 337.15 as a defense to this suit *if* the trier of fact determines that (1) there was willful misconduct involved in the construction of plaintiffs’ homes, (2) such willful misconduct resulted in the alleged latent construction defects and (3) such willful misconduct was committed

by the defendants or the facts and circumstances are such that the willful misconduct of others is appropriately chargeable to them.” (*Acosta, supra*, 128 Cal.App.4th at p. 1286.)

The trial court here distinguished *Acosta*, reasoning that there was no evidence of willful misconduct or fraud in the construction of appellant’s home. Rather, appellant’s “allegations regarding fraud relate[d] to [respondent’s] conduct after [appellant’s] purchase of the residence.”

We agree with the trial court that appellant’s allegations of fraud concerned conduct after she had moved into the home. Her fraud cause of action was based on allegations that respondent promised but failed to make repairs, concealed facts, and deliberately stalled in order to induce appellant not to file suit until the statute of limitations had run. Appellant does not assert that “there was willful misconduct involved in the construction of [her] home” (*Acosta, supra*, 128 Cal.App.4th at p. 1286.) Appellant has not borne her burden of producing sufficient evidence to raise a triable issue of material fact as to whether respondent’s actions were based on willful misconduct. (*Acosta, supra*, 128 Cal.App.4th at p. 1293.)

Appellant also challenges the trial court’s reliance on *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363 (*Lantzy*), for the proposition that equitable tolling does not apply to section 337.15. *Lantzy* held that equitable tolling does not apply to “any period in which the defendant’s promises or efforts to repair [any construction defects] are pending.” (*Lantzy, supra*, 31 Cal.4th at p. 367.) In making a counter argument, appellant relies on a lower court opinion that was disapproved in *Lantzy*. The Supreme Court’s holding in *Lantzy* is controlling.

Appellant’s final contention is that the date of use or occupancy is the event that begins the limitations period. This argument is foreclosed by the statute. As

discussed above, section 337.15, subdivision (g) provides that the period begins upon substantial completion of the improvement. Although the date of use or occupation is one of the events that can trigger the 10-year period, so is the date of recordation of a valid notice of completion, and the statute specifies that the triggering event is “whichever first occurs.” (§ 337.15, subd. (g)(2), (3).)

The trial court did not err in granting respondent’s motion for summary adjudication based on the statute of limitations.

III. Evidentiary Rulings

Appellant contends that the trial court abused its discretion in sustaining respondent’s objections to her statement of undisputed facts and overruling her objections to respondent’s statement of undisputed facts. “Although it is often said that an appellate court reviews a summary judgment motion “de novo,” the weight of authority holds that an appellate court reviews a court’s final rulings on evidentiary objections by applying an abuse of discretion standard. [Citations.]’ [Citation.]” (*Miranda v. Bomel Construction Co., Inc.* (2010) 187 Cal.App.4th 1326, 1335.)

The trial court sustained respondent’s objections to two letters appellant attached to her opposition to respondent’s summary adjudication motion, based on lack of foundation, lack of authentication, and relevance. The court’s ruling was not an abuse of discretion. Appellant did not lay a foundation or authenticate the documents in her declaration. (See Cal. Rules of Court, rule 3.1306(a) [“Evidence received at a law and motion hearing must be by declaration or request for judicial notice without testimony or cross-examination, unless the court orders otherwise for good cause shown.”].) She stated only that “the letters and evidence provided herein are true copies of the originals” in her declaration.

The court also sustained objections to documents appellant attached to her supplemental opposition to respondent's summary adjudication motion. Again, appellant did not lay a foundation or authenticate the evidence, stating only that the documents were "true copies of the originals . . . and if necessary can also be authenticated by other secondary evidence."

The court overruled appellant's objections to the notice of completion and the inspection record. Appellant objected to the notice of completion on the grounds of "materiality, accuracy and applicability to the statutes of limitation," and to the inspection record on the ground that its validity was disputed. The court's ruling was not an abuse of discretion. The documents were admitted pursuant to the declaration of respondent's employee, and they clearly were relevant to the statute of limitations. As discussed above, although appellant disputes the accuracy and validity of the documents, there is no evidence to support her contention.

The court's evidentiary rulings did not constitute an abuse of discretion.

IV. Respondent's and Appellant's Motions to Compel Discovery

A. Appellant's Motion for a Protective Order

In response to respondent's motion to compel discovery, appellant filed a motion for a protective order limiting or prohibiting discovery. She sought to prohibit respondent from taking an oral or video deposition of herself, her family, and any witnesses; inspecting her home; propounding special or form interrogatories; investigating her by any means; conducting discovery of medical records of her, her family, and any witnesses; conducting discovery of her and her family's employment, insurance, and personal records. The trial court denied

appellant's motion. She contends that this was error. We find no abuse of discretion.

A trial court's ruling on a motion to compel discovery is reviewed for abuse of discretion. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) "Management of discovery lies within the sound discretion of the trial court. Consequently, appellate review of discovery rulings is governed by the abuse of discretion standard. [Citation.] Where there is a basis for the trial court's ruling and the evidence supports it, a reviewing court will not substitute its opinion for that of the trial court. [Citation.] The trial court's determination will be set aside only when it has been demonstrated that there was "no legal justification" for the order granting or denying the discovery in question. [Citation.]" (*Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1061 (*Johnson*).)

In denying appellant's motion, the trial court explained to appellant that, because she claimed that she and members of her family developed respiratory problems as a result of the damage to her home, respondent was entitled to discovery of their medical records. The court also explained that respondent was permitted to conduct all the discovery she sought to prohibit. The court recommended that, rather than spending her time arguing motions, she should begin to prepare for trial. The trial court did not abuse its discretion in denying appellant's motion for a protective order. As the court reasoned, respondent was entitled to the discovery that appellant sought to prohibit.

Appellant relies on *Katz v. United States* (1967) 389 U.S. 347, to argue that respondent's attempt to inspect her home constitutes an unreasonable search and seizure. *Katz* addresses the right to be free from governmental intrusion in the criminal context and is inapposite. (*Id.* at p. 350.)

Appellant filed a civil suit against respondent, alleging various types of damage as a result of the alleged construction defects, raising medical, financial, and insurance issues. The rules of civil procedure provide that respondent was entitled to the discovery appellant sought to prohibit in her motion, including oral and videotaped depositions, interrogatories, and inspections of documents, land, and other property. (See, e.g., §§ 2017.010, 2025.010, 2025.340, 2030.010, 2031.010.) The trial court's denial of appellant's motion for a protective order was not an abuse of discretion.

B. Appellant's Motion to Compel Discovery

Finally, appellant contends that the trial court abused its discretion in denying her motions to compel discovery from respondent.

The trial court denied appellant's motion for an order compelling respondent to provide responses to requests for admissions. The court stated, first, that the motion failed to provide clear notice of the relief being sought. The court further stated that appellant failed timely to serve the discovery request and that the responses would not be due until after the discovery cutoff date, and that, even if not procedurally barred, appellant had failed to provide any valid basis to support her request.

The court also denied appellant's motion to extend the discovery cutoff date and/or to extend or shorten the time to compel respondent's responses to her requests. Again, the court stated that appellant failed timely to serve the discovery request because responses would not be due until after the discovery cutoff date. In addition, the court reasoned that appellant failed to provide a valid basis to support her request, and she provided no explanation for her lack of diligence in propounding discovery. The court found that appellant failed to set forth good

cause for the court to continue the trial date, stating that appellant “caused this predicament due to her failure to timely propound discovery,” and that the trial already have been continued once.

The court’s rulings were not an abuse of discretion. The trial date was June 13, 2011, which made the discovery cutoff date May 16, 2011. (§ 2024.020, subd. (a).) The evidence thus supports the trial court’s finding that appellant’s motions were untimely because respondent’s responses would have been due after the discovery cutoff date. (§ 2033.250.) In addition, the record indicates that the court had listened to appellant’s arguments, explained things to her, and attempted to give her the opportunity to present her case. There was a basis for the trial court’s ruling, and the evidence supports it; there was no abuse of discretion. (*Johnson, supra*, 80 Cal.App.4th at p. 1061.)

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.