Dept. 4
Civil Law and Motion Tentative Rulings for Friday, April 25, 2025, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. **CV57470** **Mother Lode Bank v. Sloan**
   Hearing on: Motion to Dismiss
   Moving Party: Cross-Defendant
   Tentative Ruling: Grant

This action began almost thirteen (13) years ago with a complaint for judicial foreclosure on two sizable promissory notes secured by real property in Jamestown. While the plaintiff-bank ("Bank") was pursuing a successful judgment on its complaint, the borrower-defendant ("Borrower") commenced a cross-complaint for fraud. Although there was no formal order bifurcating the complaint from the cross-complaint, the Court of Appeal found that the initial judgment entered in the case "must have been" limited to the complaint because there was no reference to, or findings made regarding, the cross-complaint. Thus, the Court of Appeal allowed the cross-complaint to survive and run its own course, albeit using the same case number. The cross-complaint went through a few iterations, eventually succumbing to the Bank's demurrer. The Borrower appealed that judgment of dismissal, insisting that he was entitled to amend his operative pleading to state facts to show the existence of a fiduciary relationship between himself and the Bank. The Court of Appeal agreed, reversing the judgment of dismissal by this court and remitting the case back to this court with directions to sustain the demurrer "with" leave to amend. The remittitur was issued and entered by the court clerk on 07/21/2021.

Before the Court this day is Bank's motion to dismiss Borrower's cross-complaint pursuant to CCP §583.320(a)(3), which provides in pertinent part that "if on appeal a judgment is reversed and the action remanded for a new trial," the action "shall" be brought to trial "within three years after the remittitur is filed by the clerk of the trial court." Although the issue here arises from the sustaining of a demurrer, and not from an underlying judgment on the merits, the difference is of no consequence.

This precise issue was squarely addressed by our Supreme Court in *McDonough Power Equipment Co. v. Superior Court* (1972) 8 Cal.3d 527. In that case, the trial court sustained a demurrer without leave to amend and entered a judgment of dismissal, which was subsequently reversed by the Court of Appeal. The trial did not commence within three years following remittitur, but the trial court refused to grant a motion to dismiss. The Supreme Court concluded this was error:

> "We conclude that where, as in the instant case, a judgment of dismissal, entered upon an order sustaining a demurrer without leave to amend, has been reversed, the action must be brought to trial within three years from the filing of the remittitur in the trial court. In such case the determination of the issues of law raised by the demurrer constitutes a trial within the meaning of section [583.320]. Upon the going down of the

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> remittitur the cause is remanded for a new trial whether the decision so provides expressly, is an unqualified reversal, or, as here, contains a direction only as to the overruling of the demurrer." *Id*. at 532-533.

The holding in *McDonough* was extended by the Court of Appeal in *Finnie v. District No. 1 – Pacific Coast District etc. Association* (1992) 9 Cal.App.4th 1311. Therein, the trial court initially granted the defendant's motion to dismiss on the erroneous ground that the three-year post-remittitur window did not cover procedural dismissals. The trial court recognized the error of its ways and reversed itself, causing the defense to immediately seek appellate intervention. The Court of Appeal, citing *McDonough*, had no difficulty finding that the three-year post-remittitur window applies to all judgments of dismissal in a case regardless of how much, or how little, that judgment of dismissal touches upon the merits: "the purported distinction between the dismissal in Finnie's case and the dismissal in *McDonough* is untenable. Neither dismissal was res judicata on the merits. *McDonough* is controlling, and the trial court here correctly concluded that the three-year statute applied." *Id*. at 1320.

Although the holding of *McDonough* was conceptually narrowed by the holdings in *Misic v. Segars* (1995) 37 Cal.App.4th 1149, 1155 [default judgment] and *Rel v. Pacific Bell Mobile Services* (2019) 33 Cal.App.5th 882, 892 [class action averments], the general *McDonough* rule remains good law. As applied here, cross-complaint had three years from remittitur entry (07/21/2021) to bring the cross-complaint to trial, which he failed to do. In March 2020, Governor Gavin Newsom declared a State of Emergency in California due to the threat of COVID-19. Governor Newsom also issued an executive order directing all California residents to follow the state public health directive to stay at their place of residence, with certain exceptions, and directing all nonessential business to cease operating to prevent further spread of COVID-19. See *SVAP III Poway Crossings, LLC v. Fitness Internat., LLC* (2023) 87 Cal.App.5th 882, 886. Shortly thereafter, the Judicial Council of California adopted emergency rule 10, which extended the deadline to bring a civil action to retrial under §583.320 by six months. Thus, cross-complainant had through 01/21/2025 to bring his cross-complaint to trial. Clearly that has not happened, and cross-complaint offers no opposition to this motion (let alone a legal basis for avoiding the mandates of §583.320).

Motion to dismiss is GRANTED.