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Court of Appeal, Sixth District, California.
CITY OF SANTA CRUZ, Plaintiff and Respondent,
v.
Praful C. PATEL, Defendant and Appellant.
[And eight other cases.[FN*]].

FN* *City of Santa Cruz v. Patel* (No. H030690, Super.Ct. No. CV154424), *City of Santa Cruz v. Shaikh* (No. H030691, Super.Ct. No. CV154425), *City of Santa Cruz v. Patel* (No. H030692, Super.Ct. No. CV154426), *City of Santa Cruz v. Patel* (No. H030693, Super.Ct. No. CV154427), *City of Santa Cruz v. Patel* (No. H030694, Super.Ct. No. CV154428), *City of Santa Cruz v. Panwala* (No. H030695, Super.Ct. No. CV154429), *City of Santa Cruz v. Patel* (No. H030696, Super.Ct. No. CV154430), and *City of Santa Cruz v. Sood* (No. H030697, Super.Ct. No. CV154431).

No. H030689.

Sept. 18, 2007.
Review Denied Jan. 3, 2008.[FN**]

FN** Werdegar, J., did not participate therein.

****827** Atchison, Barisone, Condotti & Kovacevich, John G. Barisone, Santa Cruz, Heather J. Lenhardt, for Plaintiff and Respondent.

Frank A. Weiser, Los Angeles, for Defendants and Appellants.

PREMO, J.

***239 I. INTRODUCTION**

Appellants are the operators of nine hotels in the City of Santa Cruz (City). Appellants challenge the superior court's orders directing them to comply with subpoenas issued by City pursuant to Government Code section 37104 et seq., requiring the production of records necessary for a tax compliance audit. The tax in question is City's transient occupancy tax, a 10 percent tax upon stays of 30 days or less at hotels, motels, and like accommodations within the City. (Santa Cruz Muni.Code, § 3.28.010 et seq. (SCMC).) Appellants contend that they should not be required to produce the records be-

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cause the ordinance is unconstitutional and because the subpoenas are invalid. We reject the arguments and affirm the orders.

II. FACTUAL AND PROCEDURAL BACKGROUND

City enacted the Uniform Transient Occupancy Tax Ordinance (Ordinance) in 1984. Pursuant to the Ordinance, the hotel operator collects the tax from the hotel guest and remits the tax to City.FN1 On or about February 1, 2006, City's finance director notified hotel operators that City would be conducting an audit to determine the operators' compliance with the Ordinance. Such audits are permitted by SCMC section 3.28.110, which provides that hotel operators must keep records pertaining to the tax for a period of three years and that the director of finance "shall have the right to inspect such records at all reasonable times."

FN1. Our use of the word "hotel" throughout this opinion incorporates the definition of that word contained in the Ordinance quoted below.

Appellants refused to permit the audit. City, therefore, issued legislative subpoenas pursuant to Government Code section 37104, directing appellants, as the custodians of records of their respective hotels, to produce specified documents pertaining to collection of the tax. Appellants still refused to comply. City then asked the superior court to issue an attachment or, ****828** in the alternative, for orders directing appellants to show cause why they should not comply with the subpoenas. The trial court issued orders to show cause and appellants responded by arguing that the Ordinance was unconstitutionally vague and a violation of equal protection. Appellants also argued that the subpoenas were unlawful because they were not issued based upon probable cause to believe a crime had been committed and that they did not fall within any exceptions to that requirement. The trial court rejected the arguments and ***240** ordered appellants to comply with the subpoenas. These appeals followed. Since the issues in each appeal are identical, we have ordered the appeals considered together for purposes of briefing, oral argument, and decision. FN2

FN2. There are nine cases under consideration. They are: *City of Santa Cruz v. Praful C. Patel* (case No. H030689), *City of Santa Cruz v. Sanjay Patel* (case No. H030690), *City of Santa Cruz v. Roshan Shaikh and Munaf Shaikh* (case No. H030691), *City of Santa Cruz v. Kirti Patel* (case No. H030692), *City of Santa Cruz v. Kirit Patel and Daxa Patel* (case No. H030693), *City of Santa Cruz v. Kirit Patel and Rashmi Patel* (case No. H030694), *City of Santa Cruz v. San Panwala and Kusum Panwala* (case No. H030695), *City of Santa Cruz v. B.B. Patel* (case No. H030696), and *City of Santa Cruz v. Tejal Sood* (case No. H030697).

III. APPEALABILITY

A. Introduction

[1] Before proceeding to the substance of the dispute we must decide whether the superior court's orders are appealable. We conclude that they are.

Government Code section 37104 authorizes the legislative body of a city to issue subpoenas "requiring attendance of witnesses or production of books or other documents for evidence or testimony in any action or proceeding pending before it." In the event a witness refuses to comply with the subpoena, the mayor may report that fact to the judge of the superior court. (Gov.Code, § 37106.) "The judge shall issue an attachment directed to the sheriff of the county where the witness was required to appear, commanding him to attach the person, and forthwith bring him before the judge." (*Id.,* § 37107.) "On return of the attachment and produc-

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tion of the witness, the judge has jurisdiction." (*Id.,* § 37108.) Refusal to comply with a subpoena could subject the witness to contempt proceedings. In that event, the witness has the same rights he or she would have in a civil trial "to purge himself [or herself] of the contempt." (*Id.,* § 37109.)

City issued the subpoenas and obtained enforcement orders according to the foregoing statutory scheme. Appellants claim that the compliance orders are appealable. City does not dispute that claim. There is no case directly holding that these compliance orders are appealable. Because there is a split of authority on the point as it relates to orders compelling compliance with administrative subpoenas (Gov.Code, § 11180 et seq.), we consider the issue in some detail.

B. Analysis

[2] There is no constitutional right to an appeal; the right to appeal is wholly statutory. (*Trede v. Superior Court* (1943) 21 Cal.2d 630, 634, 134 P.2d 745.) Code of Civil Procedure section 904.1 lists the types of rulings that are ***241** appealable in this state. A "judgment," other than an interlocutory judgment, is appealable. (Code Civ. Proc., § 904, subd. (a)(1).) Other specified orders are also appealable. An order compelling compliance with subpoenas issued under Government Code section 37104 et seq. is not one of them. Nor are we aware of any case specifically considering the appealability of such orders.****829** *City of Vacaville v. Pitamber* (2004) 124 Cal.App.4th 739, 748, 21 Cal.Rptr.3d 396 (*Vacaville*) was an appeal from such an order, but *Vacaville* did not consider appealability, apparently assuming the order was appealable. The cases differ on the question of whether an analogous order compelling compliance with an administrative subpoena (Gov.Code, § 11180 et seq.) is appealable.

In *Millan v. Restaurant Enterprises Group, Inc.* (1993) 14 Cal.App.4th 477, 484-485, 18 Cal.Rptr.2d 198 (*Millan*), the Fourth District Court of Appeal held that an order compelling compliance with an administrative subpoena issued pursuant to Government Code section 11181 is appealable as a final judgment in a special proceeding. In so holding, *Millan* primarily relied upon the fact that many cases, including cases from the Supreme Court, had considered appeals from such orders without addressing the appealability issue. (*Ibid.,* citing *Younger v. Jensen* (1980) 26 Cal.3d 397, 161 Cal.Rptr. 905, 605 P.2d 813; *Board of Medical Quality Assurance v. Gherardini* (1979) 93 Cal.App.3d 669, 156 Cal.Rptr. 55; *Fielder v. Berkeley Properties Co.* (1972) 23 Cal.App.3d 30, 99 Cal.Rptr. 791. See also *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 18, 56 Cal.Rptr.2d 706, 923 P.2d 1.) Of course, a case is not authority for an issue it has not considered. (*People v. Toro* (1989) 47 Cal.3d 966, 978, fn. 7, 254 Cal.Rptr. 811, 766 P.2d 577.)

Millan also cited as a basis for its holding *Wood v. Superior Court* (1985) 166 Cal.App.3d 1138, 1140, 212 Cal.Rptr. 811. (*Millan, supra,* 14 Cal.App.4th at p. 485, 18 Cal.Rptr.2d 198.) *Wood* provides no independent analysis but simply relies upon the observation in *Franchise Tax Board v. Barnhart* (1980) 105 Cal.App.3d 274, 277, 164 Cal.Rptr. 331, that "[a]n order made under the authority of [Government Code] sections 11186-11188 ... can be viewed as a final judgment in a special proceeding, appealable unless the statute creating the special proceeding prohibits such appeal."

A line of cases from the Second District Court of Appeal holds that compliance orders made under Government Code sections 11186 through 11188 are not appealable. (*Barnes v. Molino* (1980) 103 Cal.App.3d 46, 51, 162 Cal.Rptr. 786 [order is not a final determination of parties' rights and does not fit description of appealable orders listed in Code Civ. Proc., § 904.1]; *People ex rel. Franchise Tax Bd. v. Superior Court* (1985) 164 Cal.App.3d 526, 535, 210 Cal.Rptr. 695 [following *Barnes*]; accord, ***242***Bishop v. Merging Capital, Inc.* (1996) 49 Cal.App.4th 1803, 1808-1809, 57 Cal.Rptr.2d 556 (*Bishop*).) *Bishop* was of the view that, when a wit-

ness is ordered to comply with an administrative subpoena issued under Government Code section 11180 et seq., the witness is not aggrieved until he or she has disobeyed the order and been found in contempt. Prior to that, any ruling the appellate court could make would be purely advisory. "That is to say, if we were to rule in favor of the [respondent], we would simply be advising the appellants that, if the [respondent] pursues contempt proceedings, and the trial court finds [appellants] in contempt, we will uphold that ruling on appeal. Similarly, our decision in favor of appellants would amount to no more than our advice to the [respondent] that contempt proceedings will ultimately prove fruitless." (*Bishop, supra,* 49 Cal.App.4th at p. 1808, 57 Cal.Rptr.2d 556.) The appellate court did not consider the order to be a judgment because, under its analysis, the order was not final.

The orders before us compel compliance with legislative subpoenas issued pursuant to Government Code section 37104 et seq. ****830** As to these, we believe the better view is that the orders are appealable as final judgments. A judgment is the "final determination of the rights of the parties in an action or proceeding." (Code Civ. Proc., § 577.) The statutory scheme at hand provides for an original proceeding in the superior court, initiated by the mayor's report to the judge, which results in an order directing the respondent to comply with a city's subpoena. Indeed, the compliance order is tantamount to a superior court judgment in mandamus, which, with limited statutory exceptions, is appealable. (*Id.,* § 904.1, subd. (a); *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 702, 238 Cal.Rptr. 780, 739 P.2d 140.) Whether the matter is properly characterized as an "action" (Code Civ. Proc., § 22) or a "special proceeding" (*id.,* § 23), it is a final determination of the rights of the parties. It is final because it leaves nothing for further determination between the parties except the fact of compliance or noncompliance with its terms. (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc., supra,* 43 Cal.3d at p. 703, 238 Cal.Rptr. 780, 739 P.2d 140.)

[3] The fact that an intransigent witness may be subject to a contempt order does not mean that the order compelling compliance is not final. The normal rule is that "injunctions and final judgments which form the basis for contempt sanctions are appealable.... The purpose of any judicial order which commands or prohibits specific conduct is to make the sanction of contempt available for disobedience. As we have noted, this fact does not render such an order 'nonfinal,' and thus nonappealable." (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc., supra,* 43 Cal.3d at p. 704, 238 Cal.Rptr. 780, 739 P.2d 140.) Indeed, the contempt judgment is not appealable. (Code Civ. Proc., § 904.1, subd. (a)(1).) It must be reviewed, if at all, by writ. ***243**(*Davidson v. Superior Court* (1999) 70 Cal.App.4th 514, 522, 82 Cal.Rptr.2d 739.) Therefore, review of the underlying order can reliably be had only if that order is appealable.

The superior court's order determined all of the parties' rights and liabilities at issue in the proceedings; the only determination left was the question of future compliance, which is present in every judgment. (*Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1985) 192 Cal.App.3d 1530, 1537, 243 Cal.Rptr. 505.) We conclude that the orders herein must be deemed final judgments and are, therefore, appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(1).

IV. DISCUSSION

A. Standard of Review

Appellants renew the arguments they made below, i.e., that the Ordinance is unconstitutionally vague and a violation of equal protection and that the subpoenas were unlawful. There are no factual issues. The issues are purely legal. Accordingly, we apply the de novo standard of review. (*Ghirardo v. Anto-*

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