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## Should oil and gas leases require a real estate license?

May 2, 2018

The Ohio Supreme Court is set to hold oral arguments next week in the case of *Thomas Dundics, et al. v. Eric Petroleum, et al.*, Case No. 2017-0448. This case is a first of its kind in Ohio, and the proposition of law that the Court will consider is whether “oil and gas land professionals, who help obtain oil and gas leases mostly for sophisticated oil and gas development businesses, should ... be required to be licensed real estate brokers[?]” R.C. 4735.01(B) defines “real estate” as “leaseholds as well as any and every interest or estate in land situated in this state.”

Dundics contends that Ohio’s statutory licensing requirements for real estate brokers were not intended to cover oil and gas land professionals, because they perform substantially different services than residential or commercial real estate agents and their activity is limited to a very small, specific area relative to real estate rights. Eric Petroleum, on the other hand, argues that oil and gas leases fit the definition in R.C. 4735.01(B), and as such, are subject to the real estate broker licensing requirements of R.C. Chapter 4735.

The company won at the trial court level, and Dundics appealed. Eric Petroleum prevailed again at the Seventh District Court of Appeals, with the Court holding: “that the right to subsurface oil and gas is [included in the definition of ‘any and every

interest or estate in land].” *Dundics v. Eric Petro. Corp.*, 2017-Ohio-640, 79 N.E.3d 569, ¶ 26 (7th Dist.). The Seventh District relied on two conflicting decisions reached in Ohio’s federal courts for guidance: *Binder v. Trinity OG Land Dev. & Exploration, LLC*, N.D. Ohio No. 4:11-cv-02621, 2012 U.S. Dist. LEXIS 76183, 2012 WL 1970239 (May 31, 2012) (holding that a person who engages in the brokering of oil and gas leases is subject to the provisions of R.C. 4735.21), and *Wellington Resource Group, LLC v. Beck Energy Corp.*, 975 F. Supp. 2d 833 (S.D. Ohio 2013) (holding that a person who engages in the brokering of oil and gas leases is not limited by R.C. 4735.21).

The Supreme Court will hear this case on May 8, 2018 and you can watch the live oral argument at 9:00 a.m. [here](#). Stay tuned for further updates on this case on our oil and gas blog, [ShaleOhio](#).