



Ohio law requires oil and gas land professionals to hold broker's license to be compensated

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On September 25, 2018, the Ohio Supreme Court [issued](#) its decision in *Thomas Dundics v. Eric Petroleum*, Slip Opinion No. 2018-Ohio-3826, holding that the plain language of Ohio Revised Code 4735.01 does not exclude oil and gas land professionals or oil and gas leases from the definitions of “real estate” and “real estate broker” within the statute. The case considered the specific question of whether “oil-and-gas land professionals, who help obtain oil-and-gas leases for oil-and-gas development businesses, must be licensed real-estate brokers when they engage in the activities described in R.C. 4735.01(A) with respect to oil-and-gas leases,” and “[m]ore specifically, ... whether R.C. 4735.21 precludes a person who is not a licensed real-estate broker from bringing a cause of action to recover compensation allegedly owed for negotiating oil-and-gas leases.”

In the case, plaintiff-appellant Thomas Dundics met with defendant-appellee Bruce Brocker to discuss Dundics acquiring oil and gas leases on behalf of defendant-appellee Eric Petroleum. In exchange for Dundics’ services, Eric Petroleum was to compensate him for each leased acre and provide him with a percentage of the proceeds from any working wells placed on them. Following nonpayment by Eric Petroleum, Dundics brought suit alleging, in part, that he was entitled to compensation, because he was not required to be a licensed real estate broker under Ohio law since oil and gas leases are not transactions involving real estate.

The company won at the trial court level and prevailed again at the Seventh District Court of Appeals, with the Seventh District [holding](#) that “the right to subsurface oil and gas is [included in the definition of ‘any and every interest or estate in land’].” Dundics appealed the decision of the Seventh District, arguing 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.

The Ohio Supreme Court disagreed, holding that “[b]ecause there is no ambiguity in the statute, we need look no further than its plain language. We conclude that an oil-and-gas lease falls within the definition of ‘real estate’ in R.C. 4735.01(B), the negotiation of which requires a real-estate-broker’s license pursuant to R.C. 4735.01(A) and 4735.02(A). Because appellants seek compensation for conducting an activity described in R.C. 4735.01(A) without a real-estate-broker’s license, R.C. 4735.21 precludes their cause of action [for compensation].” The Court reasoned that because Ohio Revised Code Chapter 4735 excludes certain activities from the broker’s license requirement, none of which are related to oil and gas leasing, it should not write an exclusion into the statute, regardless of policy considerations raised by industry groups.

This decision is very important for land professionals currently operating in Ohio who are performing activities within the definitions contained in Revised Code Chapter 4735. However, it should be noted that the Court left the door open to changes in this area of law: “But whether [exclusion of oil-and-gas leases from the definition of “real estate”] makes sense is a policy question for the General Assembly to decide.”

Authors

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