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Ohio Supreme Court: Land Agents Are Real Estate Brokers

On September 25, 2018, the Supreme Court of Ohio issued its decision in *Dundics v. Eric Petroleum Corp.*, Slip Opinion No. 2018–Ohio–3826, holding, in essence, that the activities of oil and gas land agents negotiating and acquiring oil and gas leases constitute the activities of real estate brokers, which require a real estate brokers license pursuant to Chapter 4735 of the Ohio Revised Code.

In this case, Thomas Dundics and his company, IBIS Land Group, Ltd. (“Dundics”) had in 2010 entered into an agreement Eric Petroleum Corp. (“Eric”) to acquire oil and gas leases for Eric in exchange for compensation.¹ When Eric did not pay as to certain leases, Dundics brought a lawsuit against Eric to enforce the agreement and force payment.² Eric defended, arguing that Dundics could not bring a cause of action to recover payment because he was not a licensed real estate broker, and R.C. 4735.21 expressly precluded such an action for compensation unless the individual was licensed.³

The argument centered on whether oil and gas leasing was intended to be included in the statute’s expansive definition of “real estate” for defining the activities of a real estate broker.⁴ The trial court held that it did and dismissed the plaintiff’s lawsuit and the Seventh District Court of Appeals agreed with the trial court’s decision.⁵

The Ohio Supreme Court likewise agreed. In short, the *Dundics* Court observed that although the statute contains specific exceptions, it was not ambiguous, and there was no express exception for oil and gas leasing.⁶ As such, oil and gas leases were included in the definition of “real estate” and the activities of land agents negotiating those leases were the activities of real estate brokers. The Court was not persuaded that oil and gas leases are not real property, in light of R.C. 5301.09 (recording statute recognizing leases as real estate), nor the history of landmen working in Ohio.⁷

Although not referenced in *Dundics*, engaging in real estate broker activities without a license is a first-degree misdemeanor.⁸ Even if

R.C. 4735.01 *et seq.* is amended in the near future to expressly exclude the activities of oil and gas land agents from its scope, the consequences of this decision are immediate. Land agents, land management companies, and oil and gas companies should take immediate action to bring their operations into compliance.

For more information regarding the implications of the Supreme Court of Ohio's decision in *Dundics v. Eric Petroleum Corp.*, please contact [Chris Rogers](#) or any attorney in Frost Brown Todd's [Energy and Natural Resources Industry Team](#).

¹ *Dundics* at ¶ 2

² *Id.*

³ *Id.*, ¶ 3.

⁴ *Id.*, ¶¶ 8–10.

⁵ *Id.*, ¶¶ 4–5.

⁶ *Id.*, ¶ 11–12.

⁷ *Id.*, ¶¶ 13–14.

⁸ See R.C. 4735.99.

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