



Mineral Lessees: Ask Before You Act
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The Louisiana First Circuit Court of Appeal recently reaffirmed that lessees under a mineral lease must obtain consent from the co-owners of the land before exercising any rights under the lease. In *McCray v. Southern Aggregates, LLC*, several co-owners had an interest in property located in St. Helena Parish, which Southern Aggregates sought to lease. Two co-owners, Warren McCray and Johnny McCray Jr., purportedly acting as the authorized representatives of all of the co-owners, executed a lease agreement with Southern Aggregates. The remaining co-owners subsequently filed suit against Warren, Johnny, Southern Aggregates and Southern Aggregates' vice president, alleging that Warren and Johnny fraudulently represented that they were authorized to act on behalf of all of the co-owners. Also at issue was whether Southern Aggregates improperly exercised its rights under the lease for failing to get consent of the co-owners owning at least 80% of the land pursuant to article 166 of the Louisiana Mineral Code.

Article 166 provides that a mineral lease may be granted by a single co-owner of the land, but the lessee cannot exercise its rights under the lease until it obtains the requisite consent from the co-owners. The First Circuit found that a genuine issue of fact existed as to whether Southern Aggregates satisfied the requirements of article 166 before exercising its rights under the lease and thus reversed the partial summary judgment dismissing all of the plaintiffs' claims. The court acknowledged: "Even assuming that the Agreement was valid insofar as it concerned Warren and Johnny's undivided interests in the property, the Mineral Code provides that the mineral rights conferred in the Agreement may not be exercised unless and until the lessees comply with the provisions of § 166 regarding contacting the other co-owners and obtaining consent from at least eighty percent of the ownership interest."

Shortly before the First Circuit's ruling in *McCray v. Southern Aggregates, LLC*, the Louisiana legislature approved amendments to article 166, which now provides that a "lessee or permittee may not exercise his rights [under a mineral lease] without consent of co-owners owning at least an undivided *seventy-five percent* interest in the land," changing the law to require mineral lessees to obtain consent from co-owners owning an undivided 80% to 75% interest in the land. The changes to article 166 apply prospectively only to contracts entered into or effective after August 1, 2019. Although not completely dispensing with the consent requirement, this new change to the law should make it slightly less onerous for lessees to acquire the requisite consent before exercising their rights under mineral leases with more than one owner.