



## Supreme Court Removes Barrier to Appeals of “Purely Legal” Issues

Last week, the United States Supreme Court ruled that litigants can appeal a summary judgment ruling based on a purely legal issue without filing a post-trial motion to preserve the issue. The unanimous decision authored by Justice Amy Coney Barrett in *Dupree v. Younger* resolved a significant split among the Circuit Courts of Appeal on this issue. No. 22-210.

For trial practitioners, particularly those who litigate within multiple circuits, *Dupree* will be a welcome relief, as the ruling comports with the majority of circuits, the Rules of Civil Procedure, and common sense. It will remove one more obstacle from perfecting the appellate record, and it will promote consistency among the circuits. Nevertheless, out of an abundance of caution, counsel should take care to renew their arguments in a post-trial motion even on “legal” summary judgment issues when there may be a question as to whether the issue is “purely legal.”

Prior to *Dupree*, the First, Fourth, Fifth, Eighth, and Eleventh Circuits had held that when a party is dissatisfied with *any* summary judgment ruling, that party must file a post-trial motion for judgment as a matter of law, re-raising the issue in order to preserve it for a possible appeal. In contrast, the remaining circuit courts required this preservation exercise only for summary judgment issues decided on factual grounds. With *Dupree*, the Supreme Court sided with the majority of circuits, drawing a procedural distinction between factual and legal summary judgment determinations. *Dupree* provides much needed clarity in this procedural arena, where previously, an unwary litigant risked waiver of appellate review if it thought (sensibly) that re-raising a legal issue denied at summary judgment would have been futile.

### Requirements of the Federal Rules

Federal Rule of Civil Procedure 56(a) provides that a district court may enter summary judgment on a claim or defense if (1) there is no genuine issue as to any material fact, and (2) the movant is entitled to judgment as a matter of law. Summary judgment motions decided on the first portion of the rule—whether the plaintiff has produced sufficient evidence for a reasonable factfinder to determine that they have met the elements of their claim—are considered factual issue rulings. These types of summary judgment rulings are based on the facts developed at the time of the motion. After a denial of summary judgment, the case moves forward and an additional factual record is established based on presentation of evidence at trial. Because the facts continue to develop leading up to and during trial, the summary judgment factual determinations are rendered stale and moot. As such, if it is dissatisfied with the ultimate determination from a factual standpoint, a party must file a post-trial motion under Federal Rule of Civil Procedure 50 to confirm whether there was sufficient evidence *in the trial record* to support the verdict.

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By contrast, summary judgment determinations based on purely legal issues are made when the facts relating to a dispositive legal issue are not in dispute, and lead the court to find in favor of one party as a matter of law. For example, if the facts of a case are not in dispute as to when a certain negligent act occurred and that the plaintiff was immediately aware of the act and the harm that followed, then whether the lawsuit was timely filed within the statute of limitations period is a purely legal issue that could dispose of the case at summary judgment, regardless of whether factual disputes remain as to liability. Prior to *Dupree*, in a minority of circuits, a defendant who lost a purely legal argument at summary judgment was required to file a post-trial motion to raise the same issue again in order to preserve the issue for appeal, despite no developments at trial to change the court's analysis or determination on the legal issue. The majority of circuits instead would not have required this post-trial motion to re-assert a pure legal argument raised previously on summary judgment.

### ***Dupree* Resolves the Circuit Split**

In *Dupree*, the Supreme Court held that the rationale underlying the requirements for a renewed post-trial motion on sufficiency of the evidence does *not* support a requirement for a renewed post-trial motion based on a “purely legal” summary judgment determination. *Dupree* came before the Court after the Fourth Circuit declined to hear a requested appeal that the case should have been dismissed for failure to exhaust administrative remedies. Inmate Kevin Younger was assaulted by corrections officers while being held in pretrial detention. He pursued a civil rights claim under 42 U.S.C. § 1983 against several prison officials including former lieutenant Neil Dupree. Dupree argued at the summary judgment stage that Younger had failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act. The district court denied summary judgment, stating that there was “no dispute” that the prison system had internally investigated the assault, thereby satisfying the exhaustion requirement. At trial, Dupree did not present any evidence relating to the exhaustion defense. After the jury found Dupree liable and awarded Younger \$700,000 in damages, Dupree did not file any post-trial motion to re-raise his exhaustion defense. For this reason, the Fourth Circuit dismissed the appeal. The Supreme Court vacated the Fourth Circuit's determination, holding that it was error to require a purely legal issue resolved at summary judgment to be renewed in a post-trial motion in order to preserve the issue for appeal.

The Court held that a summary judgment motion is sufficient to preserve legal claims, because pure questions of law are not affected by future developments in the case at trial. Requiring a litigant to renew its summary judgment motion on a purely legal issue in a post-trial motion to the district court is a rote and “empty exercise,” the Court reasoned, because a trial has no impact on the legal issues underlying a case.

The Court also rejected arguments that this ruling would be practically unworkable because the line between factual and legal questions allegedly can be “vexing.” In practice, the appellate courts can easily separate factual and legal issues in the majority of instances.

If you have questions about the *Dupree* decision, or federal or state court appeals in general, please contact Christina Manfredi McKinley at 412.394.5432 or [cmckinley@babstcalland.com](mailto:cmckinley@babstcalland.com) or Alexandra G. Farone at 412.394.6521 or [afarone@babstcalland.com](mailto:afarone@babstcalland.com).

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