

71 Fed.Appx. 960, 2003 WL 21805618 (C.A.4 (N.C.))
 (Not Selected for publication in the Federal Reporter)
 (Cite as: 71 Fed.Appx. 960, 2003 WL 21805618 (C.A.4 (N.C.)))

HThis case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Fourth Circuit Rule 32.1 (Find CTA4 Rule 32.1)

United States Court of Appeals,
 Fourth Circuit.

J. Kevin WILSON; Azita Wilson, Plaintiffs-
 Appellants,

v.

DRYVIT SYSTEMS, INCORPORATED, Defen-
 dant-Appellee,
 and

D.T. Glosson Construction, Incorporated, a/k/a D.T.
 Glosson Construction, a/k/a Glosson Drywall Con-
 struction Company; Glosson Drywall Construction
 Company; Norman R. Cregan, individually and in his
 capacity as Sole Shareholder of NCW Development,
 Incorporated and Greenbrier Properties, Incorporated;
 NCW Development, Incorporated; Greenbrier Prop-
 erties, Incorporated; Southern Synthetic & Plastic,
 Incorporated; Custom Designed Exteriors, Incorpo-
 rated, Third Party Defendants.

No. 02-2070.

Argued May 8, 2003.

Decided Aug. 7, 2003.

Homeowners who claimed that new home was damaged by manufacturer's allegedly defective external cladding system brought suit against manufacturer, alleging negligence, gross negligence, negligent misrepresentation, fraud, and unfair trade practices. Following removal, the United States District Court for the Eastern District of North Carolina, W. Earl Britt, J., 206 F.Supp.2d 749, granted summary judgment in favor of manufacturer, and homeowners appealed. The Court of Appeals held that homeowners did not preserve issues for review.

Affirmed.

West Headnotes

[1] Federal Courts 170B 617

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review

170BVIII(D)1 Issues and Questions in Lower Court

170Bk617 k. Sufficiency of Presentation of Questions. Most Cited Cases

Although appellants had raised issues that were basis of their appeal in their complaint, that was insufficient to preserve issues for appellate review, given their failure to file response to successful motion for summary judgment. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

[2] Federal Courts 170B 617

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review

170BVIII(D)1 Issues and Questions in Lower Court

170Bk617 k. Sufficiency of Presentation of Questions. Most Cited Cases

Issues raised for first time in motion for reconsideration were not preserved, absent showing of mistake or excusable neglect.

*961 Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (CA-00-242-5-BR). **ARGUED: Daniel K. Bryson**, Lewis & Roberts, P.L.L.C., Raleigh, North Carolina, for Appellants. Hada DeVarona Haulsee, Womble, Carlyle, Sandridge & Rice, P.L.L.C., Winston-Salem, North Carolina, for Appellee. **ON BRIEF: Sandra W. Mitterling**, Lewis & Roberts, P.L.L.C., Raleigh, North Carolina, for Appellants. David J. Mazza, Womble, Carlyle, Sandridge & Rice, P.L.L.C., Winston-Salem, North Carolina, for Appellee.

Before WILKINS, Chief Judge, and GREGORY and

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SHEDD, Circuit Judges.

Affirmed by unpublished PER CURIAM opinion.

OPINION

PER CURIAM.

**1 Appellant brought suit against the manufacturer of an exterior cladding which allegedly caused damage to the Appellant's home. Defendant-manufacturer moved for summary judgment on each of Appellant's claims, which the district court granted. Appellant's timely appeal followed and for the reasons set forth below, we affirm.

I.

Kevin and Azita Wilson (the "Wilson" or "Appellant") and NCW Development, Inc. ("NCW") entered into a contract for the sale and purchase of property and improvements located in Morrisville, North Carolina (the "House"). NCW retained a subcontractor to apply a synthetic stucco, or Direct Applied Exterior Finish System ("DEFS"), manufactured by Dryvit Systems, Inc. ("Dryvit" or "Appellee"), to the exterior of the House. The Wilsons originally brought suit in North Carolina state court against Dryvit for damage to the House allegedly caused by the DEFS. The Wilsons asserted five claims against Dryvit: 1) negligence; 2) gross negligence; 3) negligent misrepresentation; 4) fraud; and 5) unfair and deceptive acts and practices. Dryvit removed the case to federal court based upon diversity of citizenship and filed a third-party cross-complaint against, among other parties, NCW and the DEFS subcontractor. Dryvit then filed a motion for summary judgment, to which the Wilsons failed to file a response. Shortly thereafter, the district court granted summary judgment in favor of Dryvit on all of the Wilsons' claims. The Wilsons then filed a motion for reconsideration, which the district court denied. This appeal followed.

II.

We review the district court's grant of summary judgment *de novo*. Higgins v. E.I. DuPont de Nemours & Co., 863 F.2d 1162, 1167 (4th Cir.1988). Summary judgment is appropriate only if there are no material facts in dispute and the moving party is enti-

led to judgment as a matter of law. See Fed.R.Civ.P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In determining whether summary judgment should have been granted, we view the evidence in the light most favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

III.

[1][2] Before we can reach the merits of the Wilsons' appeal, we must first determine*962 whether the issues raised in the appeal are properly before the Court. "Generally, issues that were not raised in the district court will not be addressed on appeal." Holland v. Big River Minerals Corp., 181 F.3d 597, 605 (4th Cir.1999). In this case, the Wilsons failed to file a response to Dryvit's motion for summary judgment, and the district court granted summary judgment for Dryvit on all claims. Although the Wilsons raised the issues that are the basis of this appeal in their complaint, that, alone, is insufficient to preserve the issues for appellate review. "If a party fails to assert a legal reason why summary judgment should not be granted, that ground is waived and cannot be considered or raised on appeal." Grenier v. Cyanamid Plastics, Inc., 70 F.3d 667, 678 (1st Cir.1995). Likewise, the Wilsons' motion for reconsideration does not preserve these issues for appellate review because the district court found that the Wilsons "failed to make the requisite showing of mistake or excusable neglect." See, e.g., Holland, 181 F.3d at 605 (explaining that issues raised for the first time in a motion for reconsideration are not preserved for appellate review if the district court refuses to exercise its discretion to excuse the movant's untimeliness).

IV.

**2 Accordingly, because the Wilsons failed to properly preserve for appeal the issues first raised in their complaint, the Court declines to review the merits of their claims. We therefore affirm the district court's grant of summary judgment to Dryvit.

AFFIRMED.

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