COUNTERSTATEMENT OF CASE

PROCEDURAL HISTORY

On March 1o, 1991, Mortgage One Small Business Credit, hereafter referred to as Mortgage One filed three mortgage foreclose actions against John and Jane Smith, hereafter referred to as the Smiths. The Smiths borrowed money to expand their retail space and eventually defaulted on the loans secured by mortgages held by Mortgage One They now owe in excess of $700,000.

On August 1, 1992, Mortgage One filed amended complaints and, on August 20, 1992, the Smiths filed answers with new matter and counterclaims to the amended complaints. The new matter alleged that Mortgage One violated the Small Business Credit Act, 12 U.S.C. &201-1 - &201-9.2.

On September 10, 1992, Mortgage One filed preliminary objections to the new matter and counterclaims. Following extensive briefing and two oral arguments, in an order and option dated October 1, 1993, the trial court sustained Mortgage One’s preliminary objections to the Smiths’ new matter counterclaims and dismissed them with prejudice. On November 20, 1994, the Superior Court affirmed the trial court’s order, dismissing the new matter and counterclaims. Mortgage One Small Business Credit, ACA v. John Smith, et al.. On December 1, 1994, the Smiths filed a petition for allowance of appeal to the Supreme Court. On February 28, 1994, the petition for allowance of appeal was denied.

On July 5, 1994, Mortgage One moved for summary judgment because the Smiths had admitted they failed to repay the loans secured by mortgages and because they had no valid defenses remaining. On August 11, 1994, the Smiths’ counsel filed a motion to withdraw because she refused to raise a new defense under the Small Business Credit Act that she believed was frivolous.

The Smiths retained new counsel and, on January 1, 1995, filed a response to Mortgage One’s motion for summary judgment and an opposing affidavit, which raised a new defense under the Small Business Credit Act. On January 25, 1995, Mortgage One filed a reply brief and supplemental affidavits and, on January 30, 1995, the Smiths filed a counter-affidavit. On May 8, 1995, after oral argument, the trial court granted summary judgement to Mortgage One. On June 5, 1995, the Smiths filed this appeal, which the superior court has ordered to be placed on an expedited schedule.