

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Case No. 2023-CP-23-00474

United Community Bank, a South
Carolina state-chartered bank,

Plaintiffs,

vs.

William Tart; Elaine Zix; and the South
Carolina Department of Employment and
Workforce,

Defendants.

**MASTER IN EQUITY’S ORDER AND
JUDGMENT OF FORECLOSURE AND SALE**

Deficiency Demanded as to William Tart only

Non-Jury

I, the undersigned, as Master in Equity for Greenville County, hereby find that pursuant to Order of Reference granted in the above entitled case, a hearing was held on September 20, 2023, attended by Sarah T. Clemmons of Haynsworth Sinkler Boyd, P.A., attorneys for United Community Bank, a South Carolina state-chartered bank (“Plaintiff”).

The subject mortgage is not subject to modification under the Home Affordable Modification Program (HMP) for residential loans owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). Plaintiff is not a participant in the HMP.

The Mortgage is subject to the South Carolina Supreme Court’s May 2, 2011, Administrative Order No. 2011-05-02-01 (“Administrative Order”) because this real property subject to this action is an owner occupied dwelling. Defendant William Tart (“Tart”) and Defendant Elaine Zix (“Zix”) were served a Notice of Foreclosure Intervention on February 6, 2023. As more fully set forth in the Amended Certification of Mortgagor Non-Compliance filed on

July 12, 2023, Plaintiff completed its foreclosure intervention review for Tart and Zix and believes that Tart and Zix do not qualify for further loan modification options. Therefore, this foreclosure action may proceed in the ordinary course in accordance with the terms of Administrative Order.

Testimony was proffered, which is herewith reported, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens, Certificate of Exemption from ADR, Notice of Foreclosure Intervention, Summons, and Complaint (collectively hereinafter referred to as “Pleadings”) were filed in the Office of the Clerk of Court for Greenville County on February 1, 2023, and assigned Case Number 2023-CP-23-00474 by the Clerk of Court.

2. Plaintiff caused the Pleadings to be served upon Tart through substitute service on February 6, 2023, as evidenced by the Affidavit of Service filed on February 7, 2023.

3. Plaintiff caused the Pleadings to be served upon Zix on February 6, 2023, as evidenced by the Affidavit of Service filed on February 7, 2023.

4. Plaintiff caused the Pleadings to be served upon Defendant the South Carolina Department of Employment and Workforce (“SCDEW”), by certified, return-receipt requested restricted-delivery mail on February 6, 2023, as evidenced by the two Proofs of Service filed on February 16, 2023. SCDEW timely served and filed its Answer on February 6, 2023.

5. Defendants were notified of the time, date, and place of the hearing in this matter.

6. For value received, on or about April 27, 2017, Tart executed and delivered to Plaintiff a Credit Agreement and Disclosure note in the original principal amount of One Hundred Ninety Thousand and 00/100 Dollars (\$190,000.00) (the “Note”).

7. To secure the repayment of the Note and the debt evidenced thereby, Tart and Zix executed and delivered unto Plaintiff a certain Mortgage dated April 27, 2017 (the “Mortgage”), whereby Tart and Zix mortgaged to Plaintiff the real property described in the Mortgage (the “Mortgaged Property”). The Mortgage was recorded on May 2, 2017, in the Greenville County Register of Deeds in Book MO5388 at Page 0942.

8. The Mortgage constitutes a valid first priority mortgage lien on the Mortgaged Property.

9. Plaintiff is the current holder of the Note and Mortgage.

10. At the time of the filing of the Lis Pendens, Tart and Zix were the legal owners of the Mortgaged Property.

11. Tart and Zix are the current legal owners of the Mortgaged Property.

12. On December 13, 2022, Plaintiff sent Tart a Right to Cure letter.

13. Payments due on the Note and Mortgage have not been made as provided for therein, and Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amounts due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

14. The following amounts are due and owing on the Note and the Mortgage as of September 20, 2023:

(a) Principal Balance	\$187,575.65
(b) Accrued Interest Due	\$16,123.34
(c) Late Charges	\$72.00
(d) 2019 Hazard Insurance	\$1,699.47
(e) 2020 Hazard Insurance	\$1,699.47
(f) 2022 Hazard Insurance	\$1,868.39
(g) Attorney’s Fees	\$2,500.00
(h) Attorney’s Costs	\$825.48
Balance	\$212,363.80

Interest continues to accrue on the Note at the current rate of 8.75% *per annum*, which is \$44.97 *per diem* from September 20, 2023.

15. Plaintiff seeks to foreclose the Mortgage and does not waive the right to a personal or deficiency judgment against Tart for any deficiency remaining after the sale of the Mortgaged Property. However, Plaintiff reserves the right to waive deficiency prior to the sale.

16. The following defendants may claim an interest in the Property, which appear to be junior and subordinate to Plaintiff's Mortgage:

(a) SCDEW by virtue of the following: (a) lien against William Tart in the amount of \$5,061.07 issued January 12, 2023, Lien ID 952034, Account Number 10116014; and (b) lien against William Tart in the amount of \$505.70 issued January 23, 2023, Lien ID 959649, Account Number 10116014.

17. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRCF. Any interest of this defendant is subordinate to Plaintiff's first Mortgage.

CONCLUSIONS OF LAW

I, therefore, conclude that the Mortgage is not subject to modification under the Home Affordable Modification Program, that this foreclosure proceeding is in compliance from the Administrative Order, that Plaintiff should have judgment of foreclosure of the Mortgage and the Mortgaged Property should be ordered sold at public auction after due advertisement, and a personal or deficiency judgment against Tart, with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale, shall be entered upon the judgment rolls

for Greenville County. The Mortgaged Property shall be sold at the foreclosure sale conducted by the Master in Equity for Greenville County at the sales date set forth below.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The subject mortgage is not subject to modification under the Home Affordable Modification Program (HMP) for residential loans owned, securitized or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). Plaintiff is not a participant in the HMP.

2. The Mortgage is subject to the South Carolina Supreme Court's May 2, 2011, Administrative Order No. 2011-05-02-01 ("Administrative Order") because this real property subject to this action is an owner occupied dwelling. Tart and Zix were served a Notice of Foreclosure Intervention on February 6, 2023. As more fully set forth in the Amended Certification of Mortgagor Non-Compliance filed on July 12, 2023, Plaintiff completed its foreclosure intervention review for Tart and Zix and believes that Tart and Zix do not qualify for further loan modification options. Therefore, this foreclosure action may proceed in the ordinary course in accordance with the terms of Administrative Order.

3. There is due to Plaintiff on the Note the sum \$212,363.80 as of September 20, 2023, and Plaintiff is entitled to judgment for that amount.

4. The amount due in the preceding paragraph shall constitute the total judgment debt due under the Note to Plaintiff and shall bear interest hereafter until paid on the Note at the rate of 8.75% *per annum* from September 20, 2023, until the entry of judgment and at the Note rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to

preserve the property after September 20, 2023, such advances may be added to the total judgment debt.

5. Tart is liable for the aforesaid debt, and on or before the date of sale of the Mortgaged Property, Tart may pay to Plaintiff's attorneys the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. On default of payment at or before the time herein indicated, the Mortgaged Property shall be sold by the Greenville County Master in Equity, or his agent, at public auction, at the Greenville County Courthouse, Greenville, South Carolina, County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the day designated by the selling officer succeeding such holiday), on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a deposit of five (5%) percent on the bid (in cash or its equivalent) as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash or certified funds. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash or certified funds, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash or certified funds as prescribed above. The Greenville County Master in Equity or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. Purchaser will be required to pay interest on the balance of the final bid through the date of compliance at a rate of 8.75% per annum. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. In the event of non-compliance within the thirty (30) days, the deposit shall be forfeited and applied first to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowner's association assessments accruing subsequent to the date of the deed/title issued to the purchaser. Purchaser shall pay all costs of recording the deed. Since a

deficiency judgment is being requested, the Greenville County Master in Equity will hold the sale open for a period of thirty (30) days after the date of the sale.

7. Plaintiff seeks to foreclose the Mortgage and does not waive the right to a personal or deficiency judgment against Tart for any deficiency in this action remaining after the sale of the Mortgaged Property. However, Plaintiff reserves the right to waive deficiency prior to the sale.

8. After advertisement according to law, notice of the time and place of such sale, and the terms thereof, shall be given and the Greenville County Master in Equity shall convey to the purchaser, or purchasers, a deed to the premises sold; and Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent sales day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the property sold under this Order and hereinafter more fully described. Pursuant to S.C. Code §12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

9. That the proceeds of the sale be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity's fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action;

SECOND, to the payment of Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same; and

THIRD, any surplus proceeds to be held subject to further order of this Court.

10. Upon the making of the sale of the Mortgaged Property, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers shall be let into possession of the premises on production of the deed, and the Sheriff of Greenville County shall put the holder of the deed into possession of the premises.

11. Each defendant named herein and all persons whosoever claiming under him, them or it, are forever barred and foreclosed of all right, title and interest and equity of redemption in the Mortgaged Property so sold, or any part thereof.

12. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), SCRPC.

13. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, being shown and designated as Lot Number 55 on a plat entitled "Watson Crossing", prepared by W. R. Williams, Jr. dated March 29, 1989 and recorded on May 8, 1997 in the Office of the Register of Deeds for Greenville County, South Carolina in Plat Book 34-V at Page 55.

This being the same property conveyed to William Tart and Elaine Zix by deed of Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina dated November 3, 2016 and recorded on February 2, 2017 in the Office of the Register of Deeds for Greenville County, South Carolina in Book 2505 at Page 3243.

TMS: 0484.01-01-021.00

Property Address: 5 Duchess Court, Greenville County, SC.

14. If Plaintiff or Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-23-00474

United Community Bank, a South Carolina state-chartered bank,

William Tart, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Sarah T. Clemmons, Esq.

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Foreclosure

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

5 Duchess Court, Greenville County, SC, TMS# 0484.01-01-021.00

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Master in Equity Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2023 and a copy mailed first class or placed in the appropriate attorney’s box on this _____ day of _____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

Mary M. Caskey
PO Box 11889
Columbia, SC 29211-1889

William Tart
5 Duchess Court
Travelers Rest, SC 29690

Elaine Zix
5 Duchess Court
Travelers Rest, SC 29690

Valerie McMellan, Esq. (Via E-file)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: United Community Bank vs. William Tart , defendant, et al

Case Number: 2023CP2300474

Type: Master/Order/Foreclosure & Sale and Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)