

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: May 6, 2013)

DEUTSCHE BANK NATIONAL :  
TRUST COMPANY, AS TRUSTEE :  
OF THE INDYMAC INDX :  
MORTGAGE TRUST 2007-FLX4, :  
MORTGAGE PASS-THROUGH :  
CERTIFICATES, SERIES 2007-FLX4 :  
UNDER THE POOLING AND :  
SERVICING AGREEMENT DATED :  
MAY 1, 2007 :

v. :

C.A. No. WD 2011-0677

JOSEPH COLACONE III and/or All :  
Other Unknown Current Occupants and :  
LAURA L. COLACONE and/or All :  
Other Unknown Current Occupants :

**DECISION**

**RUBINE, J.** Before the Court is a trespass and ejection action originally filed by Plaintiff Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Trust 2007-FLX4, Mortgage Pass-Through Certificates, Series 2007-FLX4 under the Pooling and Servicing Agreement dated May 1, 2007 (Plaintiff) in the District Court to obtain possession of certain real property located at 19 Jean Street, Narragansett, Rhode Island (the "Property") from Defendants Joseph Colacone III and Laura L. Colacone (Defendants). Plaintiff also seeks judgment for payment of use and occupancy in the amount of \$1,500 per month from January 31, 2011, to present. Defendants appealed a stipulated judgment for possession entered in Plaintiff's favor in the District

Court, and now it is presently before this Court for trial de novo. See G.L. 1956 § 9-12-10; see also Harris v. Turchetta, 622 A.2d 487, 490 (R.I. 1993).

This matter was set down for trial in early 2012; however, in lieu of a trial de novo, the parties agreed on the record to submit stipulated facts and documents to be considered by the Court as full exhibits. Neither party complied with this agreement; instead, each party submitted its own version of the facts accompanied by a memorandum of law and attached documents. The parties did not submit a stipulation or agreed upon exhibits to be considered by this Court as full exhibits. Thus, there is no trial record from which this Court can render a decision. Accordingly, without a trial or an agreed upon trial record the Plaintiff, which was also the Plaintiff in the District Court action, has failed to meet its burden of establishing that it is entitled in this trial de novo to a judgment of possession of the subject property and to payment of use and occupancy.

## II

### CONCLUSION

In sum, Plaintiff has failed to bear its burden of establishing that it is entitled to possession of the subject property and to payment of use and occupancy. Therefore, judgment shall enter for Defendants.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** Deutsche Bank National Trust Company v.  
Joseph Colacone, III, et al.

**CASE NO:** WD 2011-0677

**COURT:** Washington Superior Court

**DATE DECISION FILED:** May 6, 2013

**JUSTICE/MAGISTRATE:** Rubine, J.

**ATTORNEYS:**

For Plaintiff: William M. Walsh, Esq.

For Defendant: Keven A. McKenna, Esq.