

2019 PA Super 257

DANIEL PORTER AND CAROLYN PORTER : IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL PA II, L.P., TOLL PA GP, CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE, I, P.A. AND ANDERSEN WINDOWS, INC. : No. 894 EDA 2018

APPEAL OF: TOLL BROTHERS, INC., TOLL BROS., INC. TOLL PA II, L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC ANDTOLL ARCHITECTURE I, P.A.

Appeal from the Order Entered March 1, 2018 In the Court of Common Pleas of Philadelphia County Civil Division at No(s): September Term, 2017, No. 01002

MANOJ PRASAD AND CHETANA PRASAD : IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA II, L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE I, P.A., AND ANDERSEN WINDOWS, INC. : No. 895 EDA 2018

APPEAL OF: TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA II, L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE I, P.A.,

Appeal from the Order March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901803

MATTHEW O'DONNELL AND JILL : IN THE SUPERIOR COURT OF  
O'DONNELL : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA , L.P., TOLL PA GP : No. 897 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA , L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 1709

RICHARD ORLANDO AND KRISTIN : IN THE SUPERIOR COURT OF  
ORLANDO : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA , L.P., TOLL PA GP : No. 898 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA , L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Oct. Term 2017 Case ID: 171003573

JOSHUA M. OWEN AND ALLISON R. : IN THE SUPERIOR COURT OF  
OWEN : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA II, L.P., TOLL PA GP : No. 899 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA II, L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901823

RAJESH PARNERKAR AND SHILPA : IN THE SUPERIOR COURT OF  
PARNERKAR : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA II, L.P., TOLL PA GP : No. 900 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :

AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :  
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APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA II, L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Oct. Term 2017, Case ID: 171003574

ROBERT T. ROSS AND DAWN D. : IN THE SUPERIOR COURT OF  
ROSS : PENNSYLVANIA  
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v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA II, L.P., TOLL PA GP : No. 901 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA II, L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901815

JOSEPH A. SAMARCO AND LORI : IN THE SUPERIOR COURT OF  
LYNN SAMARCO : PENNSYLVANIA  
:

v. :

TOLL BROTHERS, INC., TOLL BROS,	:	
INC., TOLL PA II, L.P., TOLL PA GP	:	No. 902 EDA 2018
CORP., TOLL ARCHITECTURE, INC.,	:	
AND TOLL ARCHITECTURE I, P.A.,	:	
AND ANDERSEN WINDOWS, INC.	:	

APPEAL OF: TOLL BROTHERS, INC.,	:
TOLL BROS, INC., TOLL PA II, L.P.,	:
TOLL PA GP CORP., TOLL	:
ARCHITECTURE, INC., AND TOLL	:
ARCHITECTURE I, P.A.,	:

Appeal from the Order March 1, 2018  
 In the Court of Common Pleas of Philadelphia County Civil Division at  
 No(s): Sept. Term 2017 Case ID: 170901903

ANDREW TURK	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS,	:	
INC., TOLL PA , L.P., TOLL PA GP	:	No. 903 EDA 2018
CORP., TOLL ARCHITECTURE, INC.,	:	
AND TOLL ARCHITECTURE I, P.A.,	:	
AND ANDERSEN WINDOWS, INC.	:	

APPEAL OF: TOLL BROTHERS, INC.,	:
TOLL BROS, INC., TOLL PA , L.P.,	:
TOLL PA GP CORP., TOLL	:
ARCHITECTURE, INC., AND TOLL	:
ARCHITECTURE I, P.A.,	:

Appeal from the Order Entered March 1, 2018  
 In the Court of Common Pleas of Philadelphia County Civil Division at  
 No(s): Oct. Term 2017 Case ID: 171003572

VENKA REDDY SUNKARA AND	:	IN THE SUPERIOR COURT OF
ANITHA BADVELU SUNKARA	:	PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS,  
INC., TOLL PA II, L.P., TOLL PA GP  
CORP., TOLL ARCHITECTURE, INC.,  
AND TOLL ARCHITECTURE I, P.A.,  
AND ANDERSEN WINDOWS, INC.

No. 904 EDA 2018

APPEAL OF: TOLL BROTHERS, INC.,  
TOLL BROS, INC., TOLL PA II, L.P.,  
TOLL PA GP CORP., TOLL  
ARCHITECTURE, INC., AND TOLL  
ARCHITECTURE I, P.A.,

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sep. Term 2017 Case ID: 171003549

IGOR ZAVALNY AND TAMARA  
VOLKOVA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS,  
INC., TOLL PA II, L.P., TOLL PA GP  
CORP., TOLL ARCHITECTURE, INC.,  
AND TOLL ARCHITECTURE I, P.A.,  
AND ANDERSEN WINDOWS, INC.

No. 905 EDA 2018

APPEAL OF: TOLL BROTHERS, INC.,  
TOLL BROS, INC., TOLL PA II, L.P.,  
TOLL PA GP CORP., TOLL  
ARCHITECTURE, INC., AND TOLL  
ARCHITECTURE I, P.A.,

Appeal from the Order Entered March 1, 2018

In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Oct. Term 2017 Case ID: 171003433

TIMOTHY WELCH AND CYNTHIA WELCH : IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA , L.P., & TOLL PA GP CORP., : No. 906 EDA 2018

APPEAL OF: TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA , L.P., & TOLL PA GP CORP.,

Appeal from the Order Entered March 8, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Nov. Term 2016 Case ID: 161100904

MICHAEL A. ZISKIND AND INGRID C. ZISKIND : IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA , L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE I, P.A., AND : No. 907 EDA 2018

APPEAL OF: TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA , L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE I, P.A.,

Appeal from the Order Entered March 8, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Nov. Term 2016 Case ID: 161101721

MICHAEL MILEY AND JENNIFER MILEY : IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA II, L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE I, P.A., AND ANDERSEN WINDOWS, INC. : No. 908 EDA 2018

APPEAL OF: TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA II, L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE I, P.A.,

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901824

BRETT ADAMS, JILL O'DONNELL, JASON TEPFENHARDT, JESSICA TEPFENHARDT, JAMES WIEGERS & ANN MARIE WIEGERS : IN THE SUPERIOR COURT OF PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS, INC., TOLL PA , L.P., TOLL PA GP CORP., TOLL ARCHITECTURE, INC., AND TOLL ARCHITECTURE I, P.A., AND ANDERSEN WINDOWS, INC. : No. 909 EDA 2018



APPEAL OF: TOLL BROTHERS, INC.,  
TOLL BROS, INC., TOLL PA , L.P.,  
TOLL PA GP CORP., TOLL  
ARCHITECTURE, INC., AND TOLL  
ARCHITECTURE I, P.A.,

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Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Jan. Term 2017 Case ID: 170101225

BRIAN G. BENTRIM AND CATHERINE  
S. BENTRIM

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IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

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TOLL BROTHERS, INC., TOLL BROS,  
INC., TOLL PA , L.P., TOLL PA GP  
CORP., TOLL ARCHITECTURE, INC.,  
AND TOLL ARCHITECTURE I, P.A.,  
AND ANDERSEN WINDOWS, INC.

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No. 910 EDA 2018

APPEAL OF: TOLL BROTHERS, INC.,  
TOLL BROS, INC., TOLL PA , L.P.,  
TOLL PA GP CORP., TOLL  
ARCHITECTURE, INC., AND TOLL  
ARCHITECTURE I, P.A.,

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Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Oct. Term 2017 Case ID: 171002359

AARON CARLSON AND SUZANNE  
CARLSON

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IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

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TOLL BROTHERS, INC., TOLL BROS,  
INC., TOLL PA II, L.P., TOLL PA GP

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No. 911 EDA 2018

CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA II, L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901005

BENJAMIN LACSON AND EVELYN : IN THE SUPERIOR COURT OF  
LACSON : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA , L.P., TOLL PA GP : No. 912 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA , L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Oct. Term 2017, Case ID: 171003576

JULIAN CASTANEDA AND BRENN : IN THE SUPERIOR COURT OF  
CASTANEDA : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS,	:	
INC., TOLL PA IV, L.P., TOLL PA GP	:	No. 913 EDA 2018
CORP., TOLL ARCHITECTURE, INC.,	:	
AND TOLL ARCHITECTURE I, P.A.,	:	
AND ANDERSEN WINDOWS, INC.	:	

APPEAL OF: TOLL BROTHERS, INC.,	:
TOLL BROS, INC., TOLL PA IV, L.P.,	:
TOLL PA GP CORP., TOLL	:
ARCHITECTURE, INC., AND TOLL	:
ARCHITECTURE I, P.A.,	:

Appeal from the Order Entered March 1, 2018  
 In the Court of Common Pleas of Philadelphia County Civil Division at  
 No(s): Oct. Term 2017 Case ID: 171003533

JOHN J. COFFEY AND EILEEN COFFEY	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS,	:	
INC., TOLL PA II, L.P., TOLL PA GP	:	No. 914 EDA 2018
CORP., TOLL ARCHITECTURE, INC.,	:	
AND TOLL ARCHITECTURE I, P.A.,	:	
AND ANDERSEN WINDOWS, INC.	:	

APPEAL OF: TOLL BROTHERS, INC.,	:
TOLL BROS, INC., TOLL PA II, L.P.,	:
TOLL PA GP CORP., TOLL	:
ARCHITECTURE, INC., AND TOLL	:
ARCHITECTURE I, P.A.,	:

Appeal from the Order Entered March 1, 2018  
 In the Court of Common Pleas of Philadelphia County Civil Division at  
 No(s): Sept. Term 2017 Case ID: 170901200

JAMES COOKE AND TRACY COOKE	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS,  
INC., TOLL PA VI, L.P., TOLL PA GP  
CORP., TOLL ARCHITECTURE, INC.,  
AND TOLL ARCHITECTURE I, P.A.,  
AND ANDERSEN WINDOWS, INC.

No. 915 EDA 2018

APPEAL OF: TOLL BROTHERS, INC.,  
TOLL BROS, INC., TOLL PA VI, L.P.,  
TOLL PA GP CORP., TOLL  
ARCHITECTURE, INC., AND TOLL  
ARCHITECTURE I, P.A.,

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170903045

THOMAS DEANGELO AND CAGLAYAN  
DEANGELO

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL BROS,  
INC., TOLL PA II, L.P., TOLL PA GP  
CORP., TOLL ARCHITECTURE, INC.,  
AND TOLL ARCHITECTURE I, P.A.,  
AND ANDERSEN WINDOWS, INC.

No. 916 EDA 2018

APPEAL OF: TOLL BROTHERS, INC.,  
TOLL BROS, INC., TOLL PA II, L.P.,  
TOLL PA GP CORP., TOLL  
ARCHITECTURE, INC., AND TOLL  
ARCHITECTURE I, P.A.,

Appeal from the Order Entered March 1, 2018

In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901003

JAMES COY AND DENISE COY : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA , L.P., TOLL PA GP :  
CORP., TOLL ARCHITECTURE, INC., : No. 917 EDA 2018  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA, L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order Entered March 1, 2018

In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901196

TODD ELLIOTT AND JUDITH : IN THE SUPERIOR COURT OF  
ELLIOTT : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA II, L.P., TOLL PA GP : No. 918 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA II, L.P., :  
TOLL PA GP CORP., TOLL :

ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170901907

ROBERT KASPROW AND LAURA : IN THE SUPERIOR COURT OF  
KASPROW : PENNSYLVANIA  
:

v. :

TOLL BROTHERS, INC., TOLL BROS, :  
INC., TOLL PA , L.P., TOLL PA GP : No. 919 EDA 2018  
CORP., TOLL ARCHITECTURE, INC., :  
AND TOLL ARCHITECTURE I, P.A., :  
AND ANDERSEN WINDOWS, INC. :

APPEAL OF: TOLL BROTHERS, INC., :  
TOLL BROS, INC., TOLL PA , L.P., :  
TOLL PA GP CORP., TOLL :  
ARCHITECTURE, INC., AND TOLL :  
ARCHITECTURE I, P.A., :

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): Sept. Term 2017 Case ID: 170902048

FURRUKH MUNAWAR AND AAIYSHA : IN THE SUPERIOR COURT OF  
MUNAWAR : PENNSYLVANIA  
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v. :

TOLL BROTHERS, INC., TOLL PA, II, :  
L.P., TOLL PA GP CORP., TOLL : No. 920 EDA 2018  
BROS., INC., TOLL ARCHITECTURE, :  
INC., TOLL ARCHITECTURE I, P.A., :  
AND ANDERSON WINDOWS :  
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APPEAL OF: TOLL BROTHERS, INC., :  
TOLL PA II, L.P., (IMPROPERLY PLED :  
AS TOLL PA, II, L.P.,) TOLL PA GP :  
CORP., TOLL BROS., INC., TOLL :  
ARCHITECTURE, INC. AND TOLL :  
ARCHITECTURE, I., P.A. :

Appeal from the Order Entered March 1, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): No. 171003571

KEVIN MARCIANO AND ANGELA : IN THE SUPERIOR COURT OF  
MARCIANO : PENNSYLVANIA

v. :

TOLL BROTHERS INC., TOLL BROS, : No. 1640 EDA 2018  
INC., TOLL PA II, L.P., TOLL PA. GP :  
CORP., AND ANDERSEN WINDOWS, :  
INC. :

APPEAL OF: TOLL BROTHERS INC., :  
TOLL BROS, INC., TOLL PA II, L.P., :  
TOLL PA. GP CORP. :

Appeal from the Order Dated April 30, 2018  
In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): September Term, 2017, No. 170903704

JAMES WOJNICKI AND KIMBERLY : IN THE SUPERIOR COURT OF  
WOJNICKI : PENNSYLVANIA

v. :

TOLL BROTHERS, INC., TOLL PA, : No. 1912 EDA 2018  
L.P., TOLL PA GP CORP., TOLL BROS, :  
INC., AND ANDERSEN WINDOWS, :  
INC., :

APPEAL OF: TOLL BROTHERS, INC.,  
TOLL PA, L.P., TOLL PA GP CORP.,  
TOLL BROS, INC. ( COLLECTIVELY,  
THE "TOLL

Defendants

Appeal from the Order Dated May 22, 2018

In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): 02349 February Term, 2018

MENG KOUCH AND LISA C. KOUCH

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

v.

TOLL BROTHERS, INC., TOLL PA,  
L.P., TOLL PA II, L.P., TOLL PA GP  
CORP., TOLL BROS, INC., AND  
ANDERSEN WINDOWS, INC.,  
APPEAL: TOLL BROTHERS, INC.,  
TOLL PA II, L.P., TOLL PA, L.P., TOLL  
PA GP CORP., AND TOLL BROS., INC.  
( COLLECTIVELY, THE "TOLL")

No. 1913 EDA 2018

Defendants

Appeal from the Order Dated May 22, 2018

In the Court of Common Pleas of Philadelphia County Civil Division at  
No(s): 02432 March Term, 2018

JAMES MCFADDEN V. TOLL  
BROTHERS, INC., TOLL PA, L.P.,  
TOLL PA GP CORP., TOLL BROS,  
INC., AND ANDERSEN WINDOWS,  
INC.

IN THE SUPERIOR COURT OF  
PENNSYLVANIA



APPEAL OF: TOLL BROTHERS, INC.,	:	
TOLL PA, L.P., TOLL PA GP CORP.,	:	No. 2869 E <sup>1</sup> DA 2018
TOLL BROS, INC., AND ANDERSEN	:	
WINDOWS, INC.	:	

Appeal from the Order Entered August 14, 2018  
 In the Court of Common Pleas of Philadelphia County Civil Division at  
 No(s): 180502212

BEFORE: KUNSELMAN, J., MURRAY, J., and PELLEGRINI\*, J.

CONCURRING OPINION BY KUNSELMAN, J.: **FILED AUGUST 21, 2019**

I join the Majority Opinion in all respects except for one. I agree with my learned colleagues that (1) the warranty at issue does not bind any homeowners who did not execute Toll Brothers’ TB Form 1302, (2) the homeowners are not third-party beneficiaries under the warranty, and (3) the language in the homeowners’ complaints does not constitute admissions that the homeowners accepted the warranty and arbitration clause.

However, unlike the Majority, I believe that Toll Brothers sufficiently argued their claim of equitable estoppel. After citing and explaining the background of **Scottsdale Ins. Co. v. Kinsale Ins. Co.**, 253 F.Supp.3d 796 (E.D.Pa. 2017), and **E.I. DuPont v. Rhone Poulenc Fiber & Resin Intermediates, S.A.S.**, 269 F.3d 187 (3d. Cir. 2001), as well as other Third Circuit and district court cases, Toll Brothers applies their holdings to the homeowners’ allegations as follows:

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\*Retired Senior Judge assigned to the Superior Court.

Under Pennsylvania law, non-signatories may be estopped from disclaiming an arbitration agreement. ***Bouriez v. Carnegie Mellon Univ.***, 359 F.3d 292, 294 (3d. Cir. 2004). That is, Pennsylvania contract law does not permit a party “to claim the benefits of the contract and simultaneously avoid its burdens.” ***Scottsdale*** 253 F. Supp. 3d at 801. In fact, this sort of “cherry picking” is “precisely the situation the doctrine of equitable estoppel seeks to prevent.” ***Id.*** Otherwise stated, a non-signatory cannot embrace an agreement or receive direct benefits under it, but avoid the burdens of that agreement. ***DuPont***, 269 F.3d 187 at 200.

The plaintiffs embraced (*i.e.*, relied on) the Limited Warranty in at least two ways to their benefit. First, the plaintiffs rely predominately on statements in the Limited Warranty to assert the claims in their complaints. ***See, e.g.***, R. 65a, 509a, 918a, 1314a, 1687a, 2198a, 2574a, 2955a, 3335a, 3714a, 4089a, 4485a, 4897a, 5305a, 5772a, 6213a, 6593a, 7033a, 7446a, 7824a, 8259a, 8690a, 9124a, 9567a, 10005a, 10427a, 11002a, 11380a, 12125a, 12384a (“Toll Brothers represented in its warranty that it acknowledged that . . . Toll Brothers had an ‘obligation to build in accordance with applicable building codes.’”); R. 280a, 541a -542a, 949a, 1344a - 1345a, 1720a, 2228a -2229a, 2606a, 2987a, 3365a, 3744a, 4119a, 4510a, 4920a, 5338a, 5805a, 6244a, 6625a, 7064a, 7479a, 7855a, 8292a, 8723a, 9157a, 9600a, 10037a, 10457a, 11026a, 11408a, 12151a - 12152a, 12409a (“Toll Brothers, and/or the other Toll Defendants, made misrepresentations in the warranty extended on the Home that it was obligated by law to comply with Applicable Building Code and so complied with Applicable Building Code.”).

Second, for at least eleven of the homes at issue, the plaintiffs have submitted explicit warranty requests for the damages at issue in their complaints (whether using Toll’s warranty request form, sending an email, or through their counsel). R. 679a, 3485a, 3855a, 4281a -4282a, 5032a - 5034a, 6584a ¶¶137,139, 7182a, 8885a, 11174a -11175a, 11730a ¶¶155,158, 11550a; Tr. 11:14-20; 33:12-14. At least four other homes also have warranty requests submitted by the plaintiffs. There is no question that these particular plaintiffs embraced and availed themselves of the

benefits conferred by the Limited Warranty by asserting warranty claims for Toll to address.

It is obvious that the plaintiffs embraced the Limited Warranty. And, simply put, the plaintiffs cannot have their cake and eat it too. They have availed themselves of the Limited Warranty such that they cannot circumvent the corresponding agreement to arbitrate. Accordingly, the plaintiffs are estopped from disavowing the arbitration agreement given that they availed themselves of the benefits of the Limited Warranty for other purposes.

Toll Brothers' Brief at 52 – 54. Given all those citations to the homeowners' complaints, I believe Toll Brothers adequately explained why the federal authority in **Scottsdale** and **DuPont** applies in this case. Thus, I would reach the merits of the equitable estoppel claim.

Congress, in passing the FAA, drew no distinction between arbitration demands made in state or federal court. Indeed, the FAA preempts state law disfavoring arbitration agreements. **See, e.g., AT&T Mobility LLC v. Concepcion**, 563 U.S. 333 (2011). Moreover, due to FAA preemption, I would apply the Third Circuits' precedents on this issue. I would apply **DuPont** and **Bouriez**, just as this Court did in **Washburn v. Norther Health Facilities, Inc.**, 121 A.3d 1008 (Pa. Super. 2015), but refuse to compel arbitration for the reasons I discuss below. To do otherwise might subject our case law to a preemption challenge in federal court. **See AT&T, supra**.

Turning to the merits of Toll Brothers' equitable estoppel claim, I conclude no appellate relief is due. The party seeking to compel arbitration by a non-signatory can succeed under a claim of equitable-estoppel if the

other “person embraces the agreement **and** directly benefits from it.” **Bouriez**, 359 F.3d at 295 (emphasis added).

In making its argument, Toll Brothers has misrepresented the federal precedent upon which it relies. Beginning with the false premise that this is an “or” test, Toll Brothers claims that “a non-signatory cannot embrace an agreement **or** receive direct benefits under it, but avoid the burdens of that agreement.” Toll Brothers’ Brief at 52 (emphasis added). The **Bouriez** Court, which first applied **DuPont** to a Pennsylvania contract, directs otherwise.

In fact, **Bouriez** refused to compel arbitration based on the absence of a benefit to the non-signatory. “[T]here is simply no evidence in the record to indicate that Mr. Bouriez directly benefited from the 1996 Agreement [containing the arbitration clause].” **Id.** at 295.

The same is true here. There is no evidence that the homeowners benefited from Toll Brothers’ warranty, despite their alleged reliance upon it. Indeed, nowhere in Toll Brothers’ brief does it indicate how the homeowners actually benefited from the now-expired warranties on their homes.

In every instance where one of the homeowners here attempted to seek remuneration under the warranty, Toll Brothers rejected the claim for one reason or another. Thus, no benefit at all came to any of these homeowners under the warranty. That is why the homeowners sued Toll Brothers. Accordingly, Toll Brothers may not force the non-signatory homeowners into arbitration based upon a warranty under which they received no benefit.

In sum, I concur with the decision to affirm the order entered below; the trial court rightfully denied the petition to compel arbitration.