

# Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed May 6, 2009.

Not final until disposition of timely filed motion for rehearing.

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No. 3D09-213

Lower Tribunal No. 04-836

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**Technology for Communications International,**  
Appellant,

vs.

**Tarafa Construction, Inc.,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Scott J. Silverman, Judge.

Smith, Currie & Hancock and James F. Butler, III and Leonardo N. Ortiz (Ft. Lauderdale), for appellant.

David L. Swimmer and Kyle J. Smith and Michael C. Spring, for appellee.

Before GERSTEN, C.J., and CORTIÑAS and SALTER, JJ.

PER CURIAM.

Although the trial court erred in finding that appellant waived its right to arbitrate, see Carnival Corp. v. Booth, 946 So. 2d 1112 (Fla. 3d DCA 2006), we need not address this issue because we find the modification agreement, and the arbitration provision contained therein, to be unenforceable.

Remanded with instructions.