the negotiations and communications that occurred regarding the formation of the Idearc Runoff policy and the nature of the underlying U.S. Bank litigation. Finally, the Court reasoned that because the parties' dispute has been ongoing for five years, there was no need to resolve it expeditiously. According to the Court, "[w]hile the amount is significant, Verizon will not go out of business tomorrow if the Court's decision is delayed for the purposes of discovery."

III.2 Florida Complex Business Litigation Courts

Infinity Home Care, L.L.C. v. Amedisys Holding, LLC (Referral Sources Are a Protectable, Legitimate Business Interest Covered by Non-Compete Agreements).

In *Infinity Home Care, L.L.C. v. Amedisys Holding, LLC*,[117] the appellate court affirmed a temporary injunction enforcing non-compete and non-solicitation provisions in an employment contract, and determining that referral sources for home health services were legitimate business interests entitled to protection under Section 542.335, Florida Statutes.[118] In reaching this determination, Florida's Fourth District Court of Appeal declined to follow the precedent set forth in *Florida Hematology & Oncology v. Tummala*,[119] which held that referring physicians were not a legitimate business interest protected by Section 542.335, Florida Statutes, because the statute required that prospectively referred patients be specific and identifiable. In declining to follow *Tummala* and affirming the injunction, the court certified the conflict with *Tummala* to the Florida Supreme Court.

Amedisys Holding, LLC ("Amedisys") provided home health care services such as in-home nursing and hospice care. Before Sylvie Forjet ("Forjet"), a registered nurse began working for Amedisys, she worked with one of Amedisys' competitors, Gentiva, where she developed a substantial relationship with referral sources at the Cleveland Clinic. In 2013, Forjet was hired at Amedisys, in part based on her relationships at the Cleveland Clinic. As a condition of her employment with Amedisys, Forjet was required to sign a Protective Covenants Agreement (the "Agreement") containing a non-compete provision and a non-solicitation clause, in which Forjet agreed that during her employment with Amedisys, and for a period of one year after, she would not provide, manage, or supervise services within Broward County for any of Amedisys' competitors,

117. No. 4D14-3872, 2015 WL 4927257 (Fla. 4th DCA 2015).

118. Section 542.335, Florida Statutes, governs the enforceability of non-compete agreements and restrictive covenants. Section 542.335(1)(b), Florida Statutes requires that a restrictive covenant be justified by a "legitimate business interest," and provides a non-exclusive list of legitimate business interests, which includes "substantial relationships with specific prospective or existing customers, patients, or clients."

119. 927 So. 2d 135 (Fla. 5th DCA 2006).

that were the same or similar to the services that she provided to Amedisys. In the Agreement, Forjet also agreed that during her employment with Amedisys, and for a year after her employment with Amedisys ceased, she would not contact, solicit, or communicate with any of Amedisys' clients, customers, patients, or referral sources, to divert business from Amedisys to a competing business.

When Forjet was hired, Amedisys required that she honor her non-compete agreement with Gentiva, and that she not solicit referrals from any of her case-manager contacts at the Cleveland Clinic, until her non-compete agreement with Gentiva expired. Upon expiration of the non-compete agreement with Gentiva, Forjet solicited referrals from the Cleveland Clinic on behalf of Amedisys, and Amedisys considered these referral sources as a vital source of business and spent substantial time and money developing and maintaining the referral sources.

In June, 2014, Forjet left Amedisys to work with Infinity Home Care, LLC ("Infinity"), another of Amedisys' competitors. Immediately, Forjet began soliciting referral sources at the Cleveland Clinic, which had previously referred business to Amedisys. Amedisys filed suit against Infinity and Forjet for temporary and permanent injunctions, alleging that Forjet had violated the restrictive covenants in the Agreement, and suing Forjet for breach of the Agreement, and suing Infinity for tortious interference with an advantageous business relationship.

Infinity moved to dismiss the case citing *Tummala*,[120] for the proposition that referral sources were not a protectable legitimate business interest under Section 542.335, Florida Statutes. The trial court held an evidentiary hearing on Infinity's motion to dismiss, during which Forjet testified that she believed that the restrictive covenants in the Agreement only prevented her from using referral sources that she had first developed while working at Amedisys, and not those sources that she had brought with her to Amedisys. During her testimony, Forjet conceded that case manager turnover at the Cleveland Clinic resulted in her developing new relationships at the Cleveland Clinic while she worked for Amedisys.

The trial court granted Amedisys a one-year temporary injunction, finding that the restrictive covenants in the Agreement were enforceable to protect Amedisys' relationships with referral sources in Broward County, and that Forjet had violated them.[121] In making this determination, the trial court declined to follow *Tummala*, and relied instead on *Southernmost Foot & Ankle Specialists, P.A., v. Torregrosa*,[122] which held that referral sources were a legitimate business interest subject to protection by Section 542.335, Florida Statutes.

Infinity and Forjet appealed. In affirming the injunction on appeal, the court examined whether referral sources for home health services were a protectable, "legitimate business interest" under Section 542.335, Florida Statues.

The *Tummala* court opined that referral sources should be recognized as a legitimate business interest subject to protection in Florida non-compete agreements, but that recognizing referral sources for prospective *unidentified*

120. 927 So.2d 135.
121. *Id.* at *3.
122. 891 So. 2d 591, 593 (Fla. 3d DCA 2004).

patients as a legitimate business interest would be inconsistent with the statute, which required a "substantial relationship" with a "specific" prospective patient.[123] The Fourth District Court of Appeal disagreed, opining that the statute should not be construed so narrowly as to exclude referral sources as a legitimate business interest. It reasoned that the statute did not expressly exclude referral relationships, the legitimate business interests listed in the statute were not exclusive, that the referral relationships were the "lifeblood" of Amedisys' home care business, and that Amedisys carefully cultivated those relationships over time, and Amedisys' business depended on them.[124] Moreover, "referral sources" were specifically mentioned as a valuable business interest in the Agreement, and Amedisys hired Forjet because of her experience and her contacts with the Cleveland Clinic, she was compensated accordingly, and Amedisys supported her in maintaining and expanding those contracts, in exchange for Forjet's agreement not to solicit them for a competitor once she left Amedisys.

The court rejected Infinity's argument that even if referral sources were a protectable business interest, that Amedisys failed to meet the statutory proof and pleading requirements to obtain relief. In rejecting this argument, the appellate court relied on testimony that Forjet was soliciting the same referral sources for Infinity as she had for Amedisys, and that Amedisys' referrals from the Cleveland Clinic declined after Forjet left. Determining that the restrictive covenant and non-compete agreement was limited in scope and reasonable, the appellate court affirmed the entry of the temporary injunction, and certified conflict with *Tummala*.

CT Miami, LLC v. Samsung Electronics Latinoamerica Miami, Inc. (Trial Court Was Required to Rule on Enforceability of Arbitration Clause Prior to Compelling Arbitration but Was Not Required to Hold an Evidentiary Hearing).

In *CT Miami, LLC v. Samsung Electronics Latinoamerica Miami, Inc.*,[125] CT Miami, LLC ("CT") appealed the trial court's order denying its motion to stay arbitration without an evidentiary hearing. The appellate court determined that CT did not raise a substantial issue regarding the agreement to arbitrate, and affirmed the trial court's ruling.

CT is an open-market distributor of smart phones, selling them to wholesale and retail establishments, rather than cellular service providers. Samsung Electronics Latinoamerica Miami, Inc. ("SELA") is a Miami-based subsidiary of cell phone manufacturer, Samsung Electronics, Ltd. In 2009, CT approached SELA to discuss wholesale distribution plans for many of SELA's phones. Prior to entering into any deals, SELA required CT to enter into a distributor agreement (the "distributor agreement"), which established the general terms of

123. *Id.* at *4.
124. *Id.*
125. Case No. 3D15-641, 2015 WL 5247160 (Fla. 3d DCA 2015).

the parties' relationship and set expectations for future dealings. The distributor agreement stated that its effective date was the date on which all parties signed and dated it, and provided that it would automatically renew yearly, unless terminated pursuant to its provisions. The distributor agreement also contained an arbitration clause providing that any controversy or claim arising out of the agreement would be resolved by the American Arbitration Association (the "AAA") in Miami, Florida.

CT executed the distributor agreement and returned it to SELA. Despite subsequent requests, SELA never executed the distributor agreement. From 2009 to 2014, the parties' business arrangement was successful, until, in 2014, the Samsung Galaxy S5 had significantly lower sales than anticipated, and the market retail value of the phone plummeted. CT was forced to sell the phones at a loss, and resultantly, CT owed SELA approximately $21 million. CT refused to pay its past-due invoices, and SELA filed a statement of claim with the AAA, citing the distributor agreement as the operative contract and the basis for the AAA's jurisdiction over the dispute.[126] No alternative documents appeared to govern the parties' relationship, several emails between officers in both companies referenced the distributor agreement, and CT Miami's yearly financial statements all referenced the distributor agreement.

CT thereafter filed an action in the Circuit Court in and for Miami-Dade County, alleging that the parties had never intended the distributor agreement to control their relationship, and that instead, the parties had reached short-term oral and e-mail agreements on a per-deal basis. Concurrently with its complaint, CT also filed a motion to stay arbitration, alleging that because SELA had failed to execute the distributor agreement, there was no enforceable arbitration clause to make the dispute arbitrable. In turn, SELA filed a competing motion to compel arbitration, alleging that the distributor agreement was the operative agreement and that the arbitration clause was effective even without a countersignature, based on the parties' subsequent communications and course of conduct.

The trial court conducted a non-evidentiary hearing on the competing motions to stay and to compel arbitration, with CT arguing that it had raised a substantial issue as to whether the distributor agreement was ever formed and that, at the very least, it was entitled to an evidentiary hearing on the same. The trial court ruled that the parties were bound by the distributor agreement and that the dispute must be submitted to the AAA. It determined that the claims at issue fell within the scope of the distributor agreement, and that SELA had not waived its right to arbitrate. In its order, the trial court cited to Florida law for the proposition that even though the distributor agreement was not countersigned by SELA, "generally, it is enough that the party against whom the contract is sought to be enforced signs it." Based on the record before it, the trial court found that the parties performed in accordance with the distributor agreement. However, in paragraphs 5 and 7 of the order, the trial court ruled that the arbitrator had jurisdiction to determine whether a valid arbitration clause existed, and that CT had not waived any future rights to contest arbitration at a later time. The trial

126. *Id.* at *2.

court denied the motion to stay arbitration, and granted the motion to compel arbitration, reserving jurisdiction to enforce the arbitral award.

CT appealed, arguing that the trial court has exclusive jurisdiction to determine whether an agreement was reached between the parties such that an enforceable arbitration clause exists, and that the trial court erred by allowing the arbitrator to decide this issue. CT also appealed the trial court's issuing the order without conducting an evidentiary hearing.

On appeal, the Third District Court of Appeal agreed that the issue of whether the parties had entered into an agreement to arbitrate, when one of the parties disputed the agreement, was exclusively within the province of the trial court. In considering a motion to compel arbitration of a dispute, Florida courts consider three elements: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived. The only issue presented on appeal went to the first of the elements—whether a valid written agreement to arbitrate existed.

The appellate court determined that there are three categories of challenge to an arbitration clause: (1) a challenge to the specific provision itself; (2) a challenge to the contract as a whole that would invalidate the contract after an agreement had been reached, such as fraud, duress, or a contractual provision that is contrary to public policy; and (3) a challenge to the contract as a whole alleging that there was never an agreement between the parties, and therefore never an agreement to arbitrate. The appellate court opined that a challenge to the contract as a whole must be determined by the trial court, because arbitrators have no inherent authority over a dispute or the parties to the dispute—the only authority vested in an arbitrator is that which is contractually designated in the operative agreement. Therefore, challenges to the enforceability of a contract containing an arbitration provision must be determined by the trial court, before arbitration may be compelled. The appellate court therefore determined that the trial court's ruling that the arbitrator had jurisdiction to determine whether the arbitration provision was enforceable, and that the issue could be raised again before the arbitrator was error.

Nevertheless, the appellate court found that despite this error, the trial court had correctly ruled that the parties had entered into a binding contract containing an arbitration provision, and that based on the "tipsy coachman doctrine," it could affirm the trial court's decision despite the errors contained in paragraphs 5 and 7 of the order.

Ignoring paragraphs 5 and 7 of the order, the appellate court concluded that in paragraph 4 of the order, the trial court had correctly ruled that a valid agreement to arbitrate existed.[127] It then turned to whether the trial court could make that determination in the case, without conducting an evidentiary hearing.

The appellate court determined that the statutory provision applicable to the dispute[128] provided that if the trial court was satisfied that no substantial issue existed as to the making of the agreement or applicable arbitration provision, then the court could "summarily hear and determine the case." Given the

127. *Id.* at *8.

128. The pre-2013 version of Section 682.03(1), Florida Statutes, which was amended substantially in 2013.

undisputed facts in the case, a nearly insurmountable presumption existed that the distributor agreement and its agreement to arbitrate were valid and binding agreements. Because CT had executed the distributor agreement containing the arbitration provision, it could be enforced against CT, even in the absence of a countersignature by SELA. The parties had performed under the distributor agreement, lending additional support to the trial court's determination that it was a valid and binding agreement. Although CT denied that the parties had intended to be bound by the distributor agreement, it did not support this legal conclusion with evidence. Because the trial court specifically found that CT had failed to meet its burden of raising a substantial issue concerning entry into the distribution agreement, the appellate court agreed with the trial court that an evidentiary hearing on the issue was unnecessary, and affirmed the trial court's order compelling arbitration.

FI-Evergreen Woods, LLC v. Estate of Robinson (An Agent May Bind a Principal to an Arbitration Agreement, Provided the Agent Has Apparent Authority).

FI-Evergreen Woods, LLC v. Estate of Robinson,[129] analyzed an agent's ability to bind its principal to an arbitration agreement. The appellate court had previously remanded an appeal of the case back to the trial court for an evidentiary hearing to determine whether a patient's husband ("Mr. Robinson") had the authority to bind the patient ("Ms. Robinson") to an arbitration agreement, with his signature.[130] The trial court determined that Mr. Robinson could not bind Ms. Robinson to the agreement. The appellate court reversed, with directions to compel arbitration.

During Ms. Robinson's admission to a nursing home, she was alert and lying on her bed. The nursing home's admissions director arrived and told Ms. Robinson that she had admission documents for Ms. Robinson to sign. Ms. Robinson stated that she wanted Mr. Robinson to review and sign the documents, which he did. The documents that Mr. Robinson executed included an arbitration agreement, which the admissions director expressly stated, in Ms. Robinson's presence, was not a condition to admission to the nursing home. Relying on *Stalley v. Transitional Hospitals Corporation of Tampa*,[131] the trial court found that based on these facts, Mr. Robinson was not authorized to sign the arbitration agreement and bind Ms. Robinson.

Pursuant to *Stalley*, a non-signatory to an arbitration agreement is bound to the agreement when the signatory is authorized to act as the agent of the person sought to be bound. In *Stalley*, a hospital admission case, the appellate panel stated that the patient, the principal to the arbitration agreement, had never stated that the person who signed the arbitration agreement was authorized

129. 172 So. 3d 493 (Fla. 5th DCA 2015).
130. *Fi-Evergreen Woods, LLC v. Robinson*, 135 So. 3d 331 (Fla. 5th DCA 2013).
131. 44 So. 3d 627 (Fla. 2d DCA 2010).

to do so—the hospital had simply accepted the representation of the patient's signing spouse that she was authorized to handle the admissions documents on behalf of the patient. Accordingly, in *Stalley*, the appellate court opined that the acts of an agent, standing alone, are insufficient to establish that the agent is authorized to act for the principal.

The *Robinson* court distinguished *Stalley*, because Ms. Robinson expressly told the admissions director that she wanted Mr. Robinson to handle the admissions papers on her behalf. The appellate court viewed this as clear authorization, at least by implication, that Ms. Robinson authorized Mr. Robinson to execute the arbitration agreement, and bind her thereto. In the appellate court's opinion, it did not matter that arbitration agreements necessarily require their participants to forego jury trials, because arbitration agreements are treated like all other contracts, arbitration is a favored means of dispute resolution, and where possible, courts should resolve all doubts in favor of arbitration.

Therefore, the appellate court held that an agent may bind a principal to an arbitration agreement just like any other contract, and declined to hold that there must be an independent waiver of the principal's right to a jury trial, for an agent to bind his principal. Because the nursing home's reliance on Mr. Robinson's apparent authority to execute the arbitration agreement on Ms. Robinson's behalf was reasonable, the appellate court reversed the order on appeal with directions for the trial court to grant the motion to compel arbitration.

Woodbridge Holdings, LLC v. Prescott Group Aggressive Small Cap Master Fund, G.P. (Examining Fair Value Offer Provisions of LLC Appraisal Notice Statute).

Woodbridge Holdings, LLC v. Prescott Group Aggressive Small Cap Master Fund, G.P.,[132] involves a statutory valuation proceeding, to determine the values of the shares of a limited liability company. After a bench trial on the issue, the trial court issued a judgment containing findings of fact and conclusions of law, determining the fair value of dissenting shareholders' shares.[133] The trial court's judgment also assessed fees and costs against Woodbridge Holdings, LLC ("Woodbridge") finding that it had failed to comply with Florida's Appraisal Notice and Form statute,[134] and that it had acted arbitrarily and not in good faith in determining the fair value of the shares.[135] Woodbridge appealed the trial court's orders, and the shareholders; Prescott Group Aggressive Small Cap Master Fund, G.P.; Ravenswood Investments III, L.P.; The Ravenswood Investment Company, L.P.; and William Maeck (collectively "Appellees") cross-appealed from the trial court's corrected final judgment.

132. No. 4-D13-1262, 2015 WL 4747174 (Fla. 4th DCA 2015).

133. *Woodbridge, id.* at *1.

134. Fla. Stat. § 607.1322.

135. In a subsequent corrected final judgment, the trial court confirmed its award of interest at a fixed-rate of 8 percent, finding that this was the proper statutory interest on the date in 2009 when Woodbridge merged with another company. *Id.*

On appeal, the appellate court affirmed the trial court's valuation of the disputed shares. The appellate court found that because the trial court was confronted with a variety of evidence and methodologies concerning the valuation of the disputed shares, it was tasked with weighing the credibility of the witnesses and their valuation techniques. It found that the trial court's orders, replete with findings of fact, were supported by sufficient evidence as to the fair value of the shares. Similarly, the appellate court found that the court's determination that Woodbridge did not substantially comply with Section 602.1322, Florida Statutes' fair value offer provisions, was supported by sufficient evidence that Woodbridge's initial offer to the dissenting shareholders was not the product of an analysis using customary valuation techniques. Accordingly, the trial court affirmed this portion of the order as well, although it reversed the trial court's award of fees for appellee Ravenswood's real estate expert, John Burns, who did not testify at trial, finding that under Florida's Statewide Uniform Guidelines for taxation of costs, it was not appropriate to tax the fees for non-testifying experts as costs.

III.3 Maryland's Business and Technology Case Management Program

Morgan Stanley & Co., Inc. v. Andrews (Appeal of Ruling of Circuit Court for Montgomery County Holding That Funds Held in a Joint Bank Account Are Not Jointly Owned).

In *Morgan Stanley & Co., Inc. v. Andrews*,[136] the Maryland Court of Special Appeals considered the extent to which a creditor of one joint account holder may garnish funds in a joint account when another joint account holder is a non-debtor.

The appellant, Morgan Stanley & Co., Inc. ("Morgan Stanley") obtained a judgment against John Andrews, appellee ("Son") and subsequently requested a writ of garnishment for Son's bank accounts with PNC Bank, National Association ("PNC"). The court issued the writ of garnishment and PNC filed an answer to the writ for an account jointly titled in both the Son's name and in the name of Don D. Andrews ("Father"). Father filed a motion pursuant to Maryland Rules 2-645(i) and 2-643(e), asserting his claim to the garnished property and requesting a hearing.

At an evidentiary hearing, Father presented three witnesses: PNC branch manager Lori McConnaughey ("McConnaughey"), Son, and Father. Importantly, both Morgan Stanley and Father stipulated that Father was the original source of all of the funds in the joint account. McConnaughey testified that she assisted Father with establishing the joint account and that Father's intent was

136. 2015 WL 5735268 (Md. Ct. Spec. App. Oct. 1, 2015).