

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CASE NO: 2016-CP-26-03317

Paul Sasser, M.D.; Mark R. Borowicz, M.D.;
Lane Ingram Moore, M.D., FACS; and
Goatee Vascular, LLC,

Plaintiffs,

v.

Dominick Ronga; Mid Atlantic Vascular,
LLC; and Fresenius Vascular Care Myrtle
Beach MSO, LLC,

Defendants.

ORDER GRANTING MOTION TO
COMPEL ARBITRATION

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SC Court of Appeals

This matter is before the Court on a Motion To Compel Arbitration filed by Defendant Fresenius Vascular Care Myrtle Beach MSO, LLC ("Fresenius MSO"). A hearing on the motion was held on March 20, 2017 at the Horry County Courthouse. Present on behalf of the Plaintiffs was Thomas C. Brittain. Present on behalf of Defendant Fresenius MSO was Stephen M. Cox.

This matter arises out of a transaction entered into by the parties in December 16, 2014 that created Fresenius MSO. The transaction was governed by an agreement (the "Agreement") that prescribed the allocation of membership interests in Fresenius MSO. As required by that Agreement, Plaintiffs purchased 9% of the membership interests in Fresenius MSO and Defendant Mid-Atlantic Vascular, LLC purchased 11%. The Agreement contained a broad arbitration clause providing that "any controversy or claim arising out of or relating to this agreement or breach thereof" shall be subject to arbitration.

Almost 17 months after the foregoing transaction had been consummated, Plaintiffs filed this action. In their Complaint, Plaintiffs contend that certain facts concerning the transaction were misrepresented to them, such as the requirement that they purchase an interest in Fresenius MSO.

Plaintiffs do not deny, however, that the transaction that forms the basis of their Complaint is the same transaction governed by the Agreement that contains the arbitration clause.

Plaintiffs' essential challenge to the arbitration clause in the Agreement is that it does not apply because their Complaint alleges fraud and fraud in the inducement of the Agreement. Our Supreme Court has made it clear, however, that even fraud and fraud in the inducement claims can be subject to arbitration clauses. *See Carolina Care Plan, Inc. v. United HealthCare Svcs., Inc.*, 606 S.E.2d 752 (S.C. 2004) (compelling arbitration of fraud in inducement claim). Indeed, as recently as last year, our Supreme Court compelled arbitration of a case alleging fraud and misrepresentation. *Parsons v. John Wieland Homes and Neighborhoods of the Carolinas, Inc.*, 791 S.E.2d 128 (2016). The same result applies to this case.

Nor can Plaintiffs seek to avoid application of the arbitration clause by claiming that they were fraudulently induced into entering the contract as a whole. In *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 396 (1967), the United States Supreme Court held that arbitration clauses and the contracts in which they are found are severable, so that a party cannot avoid an arbitration clause by claiming that it was defrauded into signing the contract as a whole. Rather, as our South Carolina Supreme Court has recognized, "Fraud as a defense to an arbitration clause must be fraud *specifically as to the arbitration clause and not the contract generally.*" *Carolina Care Plan, supra*, 606 S.E.2d at 756 (emphasis in original). Plaintiffs have not made any allegation in their Complaint that they were *specifically* defrauded into signing the arbitration clause in the Agreement, and so their general claim of fraud with respect to the entire agreement is without merit.

For the foregoing reasons, Defendant Fresenius MSO's Motion To Compel Arbitration is **GRANTED**.

IT IS SO ORDERED this 6th day of April, 2017.

Honorable G. Thomas Cooper
South Carolina Circuit Judge

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Horry Common Pleas

Case Caption: Paul Sasser Md , plaintiff, et al VS Dominick Ronga , defendant, et al

Case Number: 2016CP2603317

Type: Order/Other

So Ordered

s/ Honorable G. Thomas Cooper, Jr. Circuit
Judge 2126