IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANGLE WORLD LLC,	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	No. 20-5939
	:	
JIANGSU BEIER DECORATION	:	
MATERIALS CO., LTD.,	:	
Defendant.	:	

July 31, 2023 **Anita B. Brody, J.**

EXPLANATION & ORDER

This is a breach of contract case with an unusual procedural posture. At its heart is a May 2016 agreement between defendant Jiangsu Beier Decoration Materials Co., Ltd. ("Jiangsu Beier" or "Jiangsu"), a manufacturer of flooring products, and plaintiff Angle World LLC ("Angle World"), a distributor of those products. Second Amended Complaint ("SAC") (ECF 3) ¶¶ 2-3, 13. The agreement says that Angle World would be the exclusive distributor of certain Jiangsu Beier-manufactured flooring products in Pennsylvania and several surrounding states. *Id.* ¶¶ 13, 15-16. The agreement has an arbitration clause. *Id.* ¶ 17.

Angle World alleges that Jiangsu Beier breached this agreement by (1) circumventing Angle World and selling directly to customers in the exclusive distribution territory, *id.* ¶¶ 23-25, and (2) shipping Angle World nonconforming products and refusing to remediate the defects, *id.* ¶¶ 27-29.[1] Both parties want to resolve these disputes through arbitration, not litigation in this

[1] This is not the only dispute between the parties. In a companion case, Jiangsu Beier alleged that Angle World breached a later 2018 agreement, which the parties negotiated to resolve some of their disputes under the original 2016 agreement. That 2018 agreement, unlike the original 2016 agreement at issue here, did not contain an arbitration clause. Because the parties did not agree to arbitrate their disputes under that 2018 agreement, I declined to confirm a foreign arbitration award obtained by Jiangsu Beier. *See Jiangsu Beier Decoration Materials Co. v. Angle World LLC*,

court. Angle World has filed a petition to compel arbitration in accordance with the parties' agreement. *See id.* ¶¶ 39-48. Jiangsu Beier moves to dismiss or compel arbitration. *See* Def. Mem. (ECF 46-2) at 2; Def. Mem. (ECF 37-2) at 3 n.1, 6-7; Def. Mem. (ECF 14-2) at 22-27.[2]

The May 2016 agreement is an international commercial arbitration agreement. Such agreements are governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention"), as implemented by Chapter 2 of the Federal Arbitration Act ("FAA"). *See* 9 U.S.C. § 201; *Century Indem. Co. v. Certain Underwriters at Lloyd's, London*, 584 F.3d 513, 522-23 (3d Cir. 2009).[3] As relevant here, the New York Convention provides that:

> The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

No. 21-2845, 2023 WL 4600417 (E.D. Pa. July 18, 2023).

[2] As a threshold matter, the court must determine whether to assess Jiangsu Beier's motion to compel arbitration under a motion to dismiss or a summary judgment standard, depending on whether the arbitrability of claims is apparent on the face of the complaint or attached exhibits. *Guidotti v. Legal Helpers Debt Resolution, LLC*, 716 F.3d 764, 776 (3d Cir. 2013). Because the arbitrability of the claims in this action is apparent on the face of the SAC, the court applies a motion to dismiss standard. This means that I take the facts alleged in the SAC as true and construe them in the light most favorable to the plaintiff, Angle World. *See Mayer v. Belichick*, 605 F.3d 223, 229 (3d Cir. 2010). Jiangsu Beier also moves to dismiss on personal jurisdiction and service of process grounds. Because arbitrability is a threshold question, *see Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 450 (3d Cir. 2003) (noting that "a strong federal policy in favor of arbitration over litigation . . . applies with special force in the field of international commerce" (cleaned up)), both parties agree that the case should be sent to arbitration, *see* Pl. Resp. (ECF 47) at 6 ("[I]t is imperative that the Court provide guidance and rule on the seat of arbitration issue Plaintiff previously raised."); Def. Reply (ECF 48) at 2 ("[T]he parties' dispute is indisputably subject to arbitration."), and the personal jurisdiction question may involve complex factual determinations, I will address the arbitration issue first and reserve judgment on the other issues, if any remain, after arbitration concludes. *See Int'l Foodsource, LLC v. Grower Direct Nut Co.*, No. 16-3140, 2016 WL 4150748, at *14 (D.N.J. Aug. 3, 2016); *Hinnant v. Am. Ingenuity, LLC*, 554 F. Supp. 2d 576, 588 & n.10 (E.D. Pa. 2008) (Robreno, J.).

[3] Neither party disputes any of the four factors that "a court must address . . . to determine whether [an] arbitration agreement falls under [the New York Convention]." *Standard Bent Glass Corp. v. Glassrobots Oy*, 333 F.3d 440, 449 (3d Cir. 2003); *see id.* at 449 & n.13 (listing the requirements). (1) The parties agreed in writing to arbitrate the dispute; (2) the agreement provides for arbitration in China or the United States, both signatories of the New York Convention; (3) the agreement arises from a commercial relationship; and (4) one party to the agreement, Jiangsu Beier, is not a U.S. corporation. In addition to the New York Convention and Chapter 2 of the FAA, Chapter 1 of the FAA applies to international arbitration agreements "[t]o the extent that it does not conflict with Chapter 2." *Control Screening LLC v. Tech. Application & Prod. Co. (Tecapro), HCMC-Vietnam*, 687 F.3d 163, 171 (3d Cir. 2012); *see* 9 U.S.C. § 208.

New York Convention, art. II(3), June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997.[4] Chapter 2 of the FAA implements that provision by authorizing federal courts to "direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States." 9 U.S.C. § 206.

The parties here agree on arbitrability,[5] but disagree about the arbitral forum prescribed by a forum-selection clause in the agreement. There is "a strong presumption in favor of enforcement of freely negotiated contractual choice-of-forum provisions." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc*., 473 U.S. 614, 631 (1985); *see also M/S Bremen v. Zapata Off-Shore Co*., 407 U.S. 1, 15 (1972) ("[I]n the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside."). This is because "[a]n agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum-selection clause," and discarding such a clause "would not only allow [a contracting party] to repudiate its solemn promise but would, as well, reflect a parochial concept that all disputes must be resolved under our laws and in our courts." *Scherk v. Alberto-Culver Co*., 417 U.S. 506, 519 (1974) (cleaned up). In addition, the FAA provision authorizing courts to compel arbitration "in accordance with the agreement at any place therein provided for" contemplates the enforcement of these provisions. 9 U.S.C. § 206; *see also Internaves de Mexico S.A. de C.V. v. Andromeda Steamship Corp.*, 898 F.3d 1087, 1092 (11th Cir.

[4] "Under Article II [of the New York Convention], the only affirmative defense to arbitration is a defense that demonstrates the arbitration agreement is 'null and void, inoperative or incapable of being performed.'" *Escobar v. Celebration Cruise Operator, Inc*., 805 F.3d 1279, 1286 (11th Cir. 2015). "[A]n agreement to arbitrate is 'null and void' only (1) when it is subject to an internationally recognized defense such as duress, mistake, fraud, or waiver, or (2) when it contravenes fundamental policies of the forum state." *Rhone Mediterranee Compagnia Francese di Assicurazioni e Riassicurazoni v. Lauro*, 712 F.2d 50, 53 (3d Cir. 1983) (citation omitted).

[5] Often, parties in New York Convention cases dispute arbitrability and the court is tasked with determining (1) whether there is an agreement to arbitrate and (2) whether the particular dispute falls within the existing agreement's scope. *Century Indem. Co.*, 584 F.3d at 523. But here, there is no such dispute. Both parties agree that they contracted in writing to arbitrate their disputes under the May 2016 agreement.

2018) ("[I]f the parties to an international arbitration agreement 'provided for' a forum, Chapter 2 [of the FAA] establishes a strong presumption in favor of compelling arbitration in that forum.").

The May 2016 agreement is written in both Mandarin and English, with each paragraph in Mandarin followed by a translated version of that paragraph in English. SAC Ex. A (ECF 3-1) at 2-5. The English version of the arbitration clause says:

> All disputes arising from the performance of this agreement shall be settled through friendly negotiation. Should no settlement be reached throught [sic] negotiation, the case shall then be submitted for arbitration to the China International Economic and Trade Arbitration Commission ["CIETAC"] Beijing, or any other court in US [sic] that able [sic] to resolve international arbitration, and the rules of this Commission shall be applied. The award of the arbitration shall be final and binding upon both parties.

Id. at 5. The plain language of this provision, then, leaves the parties with two options for the arbitral forum: (1) CIETAC, or (2) a forum in the United States that applies CIETAC's rules.

Angle World claims that this provision is a mistranslation of the Mandarin version of the same paragraph. SAC (ECF 3) ¶¶ 14, 44. It provides the court with a translation of the Mandarin version, which says that:

> All disputes arising out of this Agreement shall be settled through friendly negotiation. If no such settlement can be reached, the dispute shall be submitted to [CIETAC] in Beijing and every organization in the United States which is able to resolve international economic disputes for resolution by arbitration in accordance with the arbitration rules thereof. The arbitral award shall be final and binding upon the parties.

SAC Ex. B (ECF 3-2) at 9.[6] In light of this translation, Angle World argues that the Mandarin and English versions of the arbitration clause conflict, because the Mandarin version provides for arbitration in a U.S. forum that applies its own rules. SAC (ECF 3) ¶¶ 42-43. It further claims that the Mandarin version of the contract "is controlling as the erroneous English translation was

[6] Because the court employs a motion to dismiss standard, it assumes that this translation—which is referenced in the SAC and attached as an exhibit—is accurate.

secondary." Pl. Resp. (ECF 47) at 3 n.1.

Where the parties dispute the meaning of a provision in an arbitration agreement and the court is charged with "enforce[ing] [the] agreement[] according to [its] terms," it "ordinarily . . . rel[ies] on state contract principles." *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1415 (2019) (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)); *see also GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1645 (2020) ("[T]he provisions of Article II [of the New York Convention] contemplate the use of domestic doctrines to fill gaps in the Convention."); *Bauhinia Corp. v. China Nat. Mach. & Equip. Imp. & Exp. Corp.*, 819 F.2d 247, 249 (9th Cir. 1987) ("In construing arbitration clauses, standard contract principles apply.").[7] I accordingly look to Pennsylvania contract principles to the extent that they do not conflict with the New York Convention or FAA.

Applying these principles, I find that the forum-selection clause in the May 2016 agreement provides for arbitration at either CIETAC or a forum in the United States that applies CIETAC's rules. First, "[i]t is axiomatic in contract law that two provisions of a contract should be read so as not to be in conflict with each other if it is reasonably possible." *Keystone Fabric Laminates, Inc. v. Fed. Ins. Co.*, 407 F.2d 1353, 1356 (3d Cir. 1969); *see also Hazleton Coal Co. v. Buck Mountain Coal Co.*, 57 Pa. 301, 313 (1868) (describing the principle that the court "[is] not to abrogate or impair one part of a contract by another, when that other has an appropriate meaning which fully satisfies the words" as "a cardinal rule" of contract interpretation); Restatement (Second) of

[7] In an analogous case, the Eleventh Circuit resolved a dispute over the meaning of a forum-selection clause in an international arbitration agreement by reference to domestic principles of contract law. But it relied on "the general common law of contracts" rather than state contract principles because the agreement at issue was a maritime contract and the "interpretation of maritime contracts sounds in federal common law." *Internaves de Mexico S.A. de C.V. v. Andromeda Steamship Corp.*, 898 F.3d 1087, 1093 (11th Cir. 2018). Of course, "state law is preempted to the extent it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the FAA." *Lamps Plus*, 139 S. Ct. at 1415 (internal quotation marks omitted); *cf. Jiangsu Beier Decoration Materials Co. v. Angle World LLC*, 52 F.4th 554, 561-62 (3d Cir. 2022) (instructing district courts to employ "background principles of contract law . . . to the extent those principles do not conflict with the New York Convention" (cleaned up)).

Contracts § 202 (1981) ("Wherever reasonable, the manifestations of intention of the parties to a promise or agreement are interpreted as consistent with each other . . . ."). While Angle World argues that the word "thereof" in the Mandarin version refers to "every organization in the United States which is able to resolve international economic disputes . . . by arbitration," SAC (ECF 3) ¶¶ 42-43, that is not the only reasonable reading of that provision. Instead, "thereof" could refer to CIETAC, which is named in the same sentence. This reading would align the Mandarin and English versions, with each providing for arbitration at CIETAC or a U.S. forum applying CIETAC's rules. Unlike arbitration agreements where two forum-selection provisions are "mutually exclusive," *Bauhinia Corp. v. China Nat. Mach. & Equip. Imp. & Exp. Corp.*, 819 F.2d 247, 249 (9th Cir. 1987), the court can reasonably read the two versions in harmony.[8]

Even if uncertainty remains, "it is well settled that a written agreement will be construed against the party preparing it." *Cent. Transp. v. Bd. of Assessment Appeals*, 417 A.2d 144, 149 (Pa. 1980); *see also* Restatement (Second) of Contracts § 206 (1981) ("In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds."). As Angle World admits, the provision was drafted by its own employee during negotiations between the two firms. SAC (ECF 3) ¶ 44. In sum, the court cannot identify

[8] In addition, "specific terms and exact terms are given greater weight than general language." Restatement (Second) of Contracts § 203 (1981); *see also Harrity v. Cont'l-Equitable Title & Tr. Co.*, 124 A. 493, 494 (Pa. 1924) ("[N]or can a clear provision in a written instrument be overcome by one that is doubtful."). The English version says "the rules of this Commission"—phrasing that specifically references CIETAC, the "Commission" referred to earlier in the sentence. SAC Ex. A (ECF 3-1) at 5. The Mandarin version, by contrast, uses the vaguer word "thereof." SAC Ex. B (ECF 3-2) at 9. Courts interpreting contracts also assume that contracting parties would not intend an illogical result. *See Tustin v. Phila. & Reading Coal & Iron Co.*, 95 A. 595, 598 (Pa. 1915); *see also* Restatement (Second) of Contracts § 203 (1981) ("[A]n interpretation which gives a reasonable, lawful, and effective meaning to all the terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect."). The Mandarin version permits the parties to submit their dispute to CIETAC "*and every* organization in the United States which is able to resolve international economic disputes . . . by arbitration." SAC Ex. B (ECF 3-2) at 9 (emphasis added). Adopting this interpretation would permit multiple arbitration proceedings to advance simultaneously, an illogical result.

any grounds to discard a clear and unambiguous English provision that can be read in harmony with the Mandarin version of the same provision—particularly when it was drafted by the party seeking to invalidate it.

I will therefore "require this representative of the American business community to honor its bargain" by holding it to the agreement that it negotiated and signed. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc*., 473 U.S. 614, 640 (1985) (cleaned up). Earlier in the case, I encouraged the parties to find a mutually agreeable arbitral forum that would apply CIETAC's rules, as required by the agreement. *See* Explanation and Order (ECF 31) at 3; Order (ECF 40) at 1. Because the parties could not find such a forum, I will compel arbitration at CIETAC in accordance with the terms of the agreement and stay the case pending its resolution.[9]

AND NOW, this 31st day of July, 2023, it is **ORDERED** that the Defendant's Motion to Dismiss is **GRANTED IN PART** to the extent that the parties are **ORDERED** to submit this matter to arbitration at CIETAC in accordance with the terms of their agreement. The case is **STAYED** pending the completion of arbitration. It is further **ORDERED** that the parties must submit a joint status report to the court upon completion of arbitration or on or before January 29, 2024, whichever comes first.

s/ANITA B. BRODY, J.

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[9] Angle World is correct that, under § 4 of the FAA, the court has no power to compel arbitration outside its own district. Pl. Resp. (ECF 47) at 6; *see Econo-Car Int'l, Inc. v. Antilles Car Rentals, Inc*., 499 F.2d 1391, 1394 (3d Cir. 1974). But "[a] district court's primary authority to compel arbitration in the international context comes from 9 U.S.C. § 206, rather than from 9 U.S.C. § 4." *Control Screening LLC v. Tech. Application & Prod. Co. (Tecapro), HCMC-Vietnam*, 687 F.3d 163, 171 n.6 (3d Cir. 2012). Chapter 1 of the FAA, which includes § 4, applies to international arbitration agreements only "[t]o the extent that it does not conflict with Chapter 2," which includes § 206. *Id.* at 171. And "Chapter 2 of the FAA makes it crystal clear that the statute contemplates foreign arbitrations." *InterGen N.V. v. Grina*, 344 F.3d 134, 142 (1st Cir. 2003); *see also Internaves de Mexico S.A. de C.V. v. Andromeda Steamship Corp.*, 898 F.3d 1087, 1092 (11th Cir. 2018) (discussing the interaction between 9 U.S.C. § 4 and 9 U.S.C. § 206). The court therefore has authority to compel arbitration at a forum outside of its district when the agreement "provide[s] for" such a forum. 9 U.S.C. § 206. The May 2016 agreement unequivocally provides for arbitration at CIETAC. *See* SAC Ex. A (ECF 3-1) at 5; SAC Ex. B (ECF 3-2) at 9.