PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1633

RACHAN DAMIDI REDDY,

Plaintiff - Appellee,

v.

RASHID A. BUTTAR,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:18-cv-00172-FDW-DSC)

Argued: March 10, 2022 Decided: June 24, 2022

Before NIEMEYER, MOTZ, and KING, Circuit Judges.

Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Motz and Judge King joined.

ARGUED: George William Thomas, BROWNSTONE, P.A., Winter Park, Florida, for Appellant. Joel M. Bondurant, Jr., BONDURANT LAW, PLLC, Charlotte, North Carolina, for Appellee. **ON BRIEF:** Robert L. Sirianni, Jr., BROWNSTONE, P.A., Winter Park, Florida, for Appellant.

NIEMEYER, Circuit Judge:

This case raises questions about the enforcement of a Singapore arbitration award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 (the "Convention"), as implemented by 9 U.S.C. §§ 201–208.

Following a dispute over an agreement involving the sale of real property in the Philippines, Rachan Reddy, a citizen and resident of Vietnam, initiated arbitration proceedings in Singapore against Rashid Buttar, then a citizen and resident of North Carolina. After Reddy obtained an award against Buttar of $1.55 million, plus legal fees and arbitration costs, he commenced this action in the district court to enforce the award under the Convention. The court denied Buttar's jurisdictional challenges and granted Reddy summary judgment, enforcing the award to the full extent requested.

Buttar contends on appeal (1) that the district court did not have subject matter jurisdiction because the requirements for invoking the Convention were not satisfied; (2) that the court did not have personal jurisdiction over him because his contacts with North Carolina at the time Reddy commenced this action were insufficient to support general personal jurisdiction; and (3) that the court erred in entering summary judgment on the merits because there were genuine disputes of material fact about the existence of the arbitration agreement.

Finding none of Buttar's arguments persuasive, we affirm.

I

According to the findings of the Singapore arbitrator, Buttar and Reddy signed a "Share Sale and Purchase Agreement" dated June 21, 2010, by which Buttar agreed to sell Reddy shares of companies owning indirectly Dumanpalit Island in the Philippines for $3 million. After execution of the agreement, Reddy paid several advances toward the purchase price, totaling $1.5 million, plus $50,000 for payment of taxes. Thereafter, however, Reddy learned that a local indigenous tribe claimed ownership of the island and that the Philippines National Commission on Indigenous Peoples had conveyed title to the island to the tribe about six months before Buttar and Reddy had signed their agreement. Accordingly, the arbitrator found that Buttar was not in a position to sell the island to Reddy and that he breached the agreement's warranty of title. While Reddy demanded a refund of the $1.5 million, Buttar nonetheless sought to enforce the agreement, demanding the remaining portion of the purchase price, plus interest, penalty fees, and reimbursement costs — totaling $1.99 million.

In response to the dispute, Reddy commenced an arbitration proceeding in Singapore, as provided for in paragraph 8(b) of the agreement. Buttar objected to the arbitrator's jurisdiction, claiming (1) that Reddy did not sign the agreement and (2) that even assuming he did, the document that Reddy submitted to the arbitrator was not the latest version but only a "working draft." After submitting these objections, however, neither Buttar nor his counsel attended the arbitration hearing, despite being notified of the hearing date.

After receiving evidence — including numerous emails between Buttar and Reddy — the arbitrator found that both Buttar and Reddy signed the agreement and that thereafter the parties functioned under it until the title dispute arose. By order dated April 10, 2015, the arbitrator enforced the agreement and ordered Buttar to pay Reddy $1.55 million, plus interest at the rate of 5.33% per annum. The arbitrator also ordered Buttar to pay $494,702 in legal fees and arbitration costs.

Reddy commenced this action on April 6, 2018, to enforce the award under the Convention. To his amended petition, he attached certified copies of (1) the fully signed agreement of June 21, 2010, between the parties and (2) the arbitration award of April 10, 2015.

Buttar filed a motion to dismiss, alleging (1) a lack of subject matter jurisdiction because, as he alleged, "no executed contract or agreement to arbitrate existed between the parties" and the one that Reddy provided to the court was not the final version;[*] (2) a lack of personal jurisdiction because of his insufficient contacts with North Carolina; and (3) an inappropriate venue in the district.

The district court rejected Buttar's challenge to its subject matter jurisdiction, noting that 9 U.S.C. § 203 expressly provides that "'[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States' and that 'district courts of the United States . . . shall have original jurisdiction over such an

[*] While the copy of the agreement that Reddy attached to his *original* petition to enforce the arbitration award was not fully signed, he attached to his amended petition a certified copy of the agreement that had been fully signed by both parties.

action or proceeding.'" (Quoting 9 U.S.C. § 203). The court observed that any challenge to whether the purchase agreement was signed went at most to "the merits of the case" and whether the petition stated a claim, not to the court's subject matter jurisdiction. (Quoting *Sarhank Grp. v. Oracle Corp.*, 404 F.3d 657, 660 (2d Cir. 2005)). As to Buttar's challenge to personal jurisdiction, the court, after allowing jurisdictional discovery and conducting a hearing, concluded that Buttar's contacts with North Carolina were sufficient to justify exercising general personal jurisdiction over him. And finally, because of the court's findings on jurisdiction, it also rejected Buttar's venue challenge.

After the court denied Buttar's motion to dismiss, Reddy filed a motion for summary judgment to enforce the arbitration award. In response, Buttar asserted again that the agreement between the parties did not exist, contending that Reddy had procured his award before the Singapore arbitrator "by submitting a false or fraudulent [version of the purchase agreement] to the [arbitrator]." Accordingly, he argued that Reddy had "failed to prove there is no genuine issue as to any material fact and . . . therefore failed to meet the burden to prevail on his Motion for Summary Judgment."

By order dated May 5, 2020, the district court granted Reddy's motion for summary judgment and ordered that the arbitration award be enforced. The court found, among other things, that Buttar had failed to present evidence to support any of his defenses relating to the existence and enforceability of the agreement, noting in particular that "he ha[d] not presented evidence of the allegedly fraudulent act."

From the district court's May 5, 2020 judgment, Buttar filed this appeal.

II

Buttar contends first that the district court lacked subject matter jurisdiction over Reddy's action because the Convention's requirements for an enforceable arbitration award had not been satisfied and were conditions for jurisdiction. Noting that any agreement enforceable under the Convention "must be 'in writing . . . signed by the parties or contained in an exchange of letters or telegrams'" (quoting Convention, art. II), he argues that he "neither executed the contract in question nor consented to arbitration."

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards is an international treaty aimed at "encourag[ing] the recognition and enforcement of commercial arbitration agreements in international contracts." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974). Fundamentally, it sets forth standards for the observance and enforcement of arbitration awards and requires signatory states to recognize and enforce such arbitration awards from other states. Most relevant to this case, the Convention provides that a party seeking to enforce an award must supply an original version or "duly certified copy" of both the award and the arbitration agreement, and it requires that the agreement be in writing and signed by the parties. Convention, arts. II, IV.

The United States acceded to the Convention in 1970, *see* 21 U.S.T. 2517, and Congress enacted an implementing statute that same year, *see* 9 U.S.C. §§ 201–08. In that statute, Congress provided district courts with original jurisdiction over actions "falling under the Convention." *Id.* § 203. Specifically, § 203 provides that "[a]n action or proceeding falling under the Convention shall be deemed to arise under the laws and

treaties of the United States" and "[t]he district courts of the United States . . . shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy." *Id.* This jurisdictional grant parrots the grant of federal-question jurisdiction in 28 U.S.C. § 1331, which confers jurisdiction on district courts over "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Thus, both § 203 and § 1331 confer subject matter jurisdiction over enforcement actions brought under the Convention.

Buttar argues that because subject matter jurisdiction is conferred by § 203 for actions "falling under the Convention," parties invoking this jurisdiction must satisfy the Convention's requirements, including the written-and-signed agreement requirement reflected in Articles II and IV. And he has some support for this argument. In *Czarina, L.L.C. v. W.F. Poe Syndicate*, 358 F.3d 1286, 1292 (11th Cir. 2004), the court reasoned that "because the Convention uses mandatory language in establishing the prerequisites" for enforcement of an arbitration award, a party's failure to satisfy those prerequisites means "the [district] court is without power to confirm an award" and therefore lacks "subject matter jurisdiction to confirm the award."

But after considering the issue under well-established principles, we conclude that the analysis in *Czarina* blurs the distinction between jurisdictional and merits requirements. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 510–14 (2006) (describing how courts have frequently confused the lack of subject matter jurisdiction with the plaintiff's failure to state a claim).

As noted, the Convention does indeed impose specific requirements *for an agreement* to be enforceable under its provisions — that it be in writing, contain an arbitration clause, and be signed by the parties, *see* Convention, art. II — and *for the enforcement of arbitration awards* issued on the agreement — that the plaintiff supply to the enforcing authority the authenticated original award and the original agreement or certified copies of them, *see* Convention, art. IV. But these requirements relate to the "merits" of establishing an award's enforceability under the Convention. They do not specify what entity within a contracting state should be the competent authority for evaluating the merits, nor do they delineate that authority's jurisdiction. Rather, those issues are left to the contracting states. *See* Convention, art. III (providing that contracting states "shall recognize arbitral awards as binding and enforce them *in accordance with the rules of procedure of the territory where the award is relied upon*" (emphasis added)). And in the United States, 9 U.S.C. § 203 provides those rules.

Specifically, § 203 provides that actions "falling under the Convention" arise under the laws of the United States and may be filed in U.S. district courts. 9 U.S.C. § 203. And an arbitration agreement or award "falls under the Convention" when it "aris[es] out of a legal relationship, whether contractual or not, which is considered as commercial," but excluding "[a]n agreement or award arising out of such a relationship which is entirely between citizens of the United States . . . unless that relationship involves [among other things] property located abroad." *Id*. § 202. This jurisdictional grant for actions falling under the Convention, however, includes no requirement that a court "assess an award against the Convention's requirements before exercising jurisdiction." *Al-Qarqani v.*

Chevron Corp., 8 F.4th 1018, 1025 (9th Cir. 2021); *see also Sarhank Grp. v. Oracle Corp.*, 404 F.3d 657, 660 (2d Cir. 2005) (holding that a party's argument that "the district court lacked subject matter jurisdiction in the absence of a signed written arbitration agreement . . . depends entirely upon its view of the merits of the case, and therefore does not involve a lack of subject matter jurisdiction").

Thus, the Convention's requirements for an agreement that can give rise to an enforceable award speak to the *merits* of a plaintiff's enforcement action, whereas § 203 confers *subject matter jurisdiction* on U.S. district courts over actions "falling under" the Convention. Focusing on this distinction between merits and jurisdiction, a plaintiff's failure to establish the Convention-specified requirements of an enforceable arbitration agreement or award will raise the *merits* question of whether the plaintiff's claim is valid. But that validity is something to be litigated and determined. It does not go to *the power* of the court to make the determination — its subject matter jurisdiction. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998) ("It is firmly established in our cases that the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction, *i.e.*, the courts' statutory or constitutional *power* to adjudicate the case"). Thus, while subject matter jurisdiction goes to the *power* of the court to assess the elements of a cause of action, merits determinations address whether the plaintiff failed to allege or to prove an element required to establish the cause of action. For these reasons, we opt to join the Second and Ninth Circuits, which have reached the same conclusion. *See Al-Qarqani*, 8 F.4th at 1024 (agreeing that "the existence a written agreement to arbitrate is a merits question that does not affect subject-matter jurisdiction"); *Sarhank Grp.*, 404 F.3d at 660

& n.2 (same). *But cf. Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 366–67 (4th Cir. 2012) (characterizing, in passing, the Convention's written-and-signed agreement requirement as a "jurisdictional prerequisite[]" and "jurisdictional factor[]" but not squarely addressing whether it is a jurisdictional requirement or merits issue). And in reaching this conclusion based on the merits-jurisdiction distinction, we adhere to *Arbaugh*'s "bright line" rule that "when Congress does not rank a statutory limitation on coverage as jurisdictional, courts should treat the restriction as nonjurisdictional in character." 546 U.S. at 516.

Accordingly, we reject Buttar's challenge to the district court's subject matter jurisdiction.

III

Buttar also contends that he was not subject to the personal jurisdiction of the district court. He acknowledges that he was a citizen and resident of North Carolina up until June or July 2016, but he asserts that at that time, he "moved" from North Carolina to New Zealand and thus no longer had contacts with North Carolina sufficient to subject him to the personal jurisdiction of a court in the State when this action was commenced in April 2018. He notes that because Reddy is attempting to invoke only general jurisdiction — not specific jurisdiction based on events in the litigation — he addresses only the requirements for general jurisdiction, pointing out that a court deciding general jurisdiction "must look to the defendant's domicile." Under that guidance, he maintains that at the time this action was commenced, he was a domiciliary of New Zealand.

General personal jurisdiction allows a court to "hear *any* claim against [a] defendant, even if all the incidents underlying the claim occurred in a different State." *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017). And for individuals, "the paradigm forum for the exercise of general jurisdiction is the individual's domicile." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). To establish a domicile in a State, it must be shown that the individual has a physical presence in that State with "an intent to make [that] State a home." *Johnson v. Advance Am., Cash Advance Ctrs. of S.C., Inc.*, 549 F.3d 932, 937 n.2 (4th Cir. 2008) (citing *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989)). And once established, a domicile "is presumed to continue until it is shown to have been changed," with the burden of proof residing with the person claiming the domicile has changed. *Mitchell v. United States*, 88 U.S. 350, 353 (1874).

Because Buttar concedes that he was domiciled in North Carolina up to at least June 2016, that domicile is presumed to continue — establishing the district court's personal jurisdiction over him — unless he is able to demonstrate a change in that domicile before this action was commenced.

The determination of a person's domicile is a fact-intensive inquiry. Thus, while we review a district court's decision to exercise personal jurisdiction over a defendant *de novo*, we assess the court's supporting factual findings — including findings of fact relating to a party's domicile — for clear error. *See Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Plumbing Servs., Inc.*, 791 F.3d 436, 443 (4th Cir. 2015). And clear error is found only when we are "left with the definite and firm conviction that a mistake has

been committed." *United States v. Pulley*, 987 F.3d 370, 376 (4th Cir. 2021) (citation omitted).

After the parties conducted discovery with respect to Buttar's contacts with North Carolina during the relevant period and provided the court with fulsome briefs, the court conducted a hearing, after which it made findings of fact and concluded that Buttar had not overcome the presumption of his North Carolina domicile and that he therefore remained subject to the general jurisdiction of the court at the time Reddy commenced this action. The court summarized those findings as follows:

> Both parties concede that Buttar was a citizen and resident of North Carolina from 1996 to at least June or July of 2016. Over the last twenty-one years, Buttar has started multiple businesses in North Carolina. He has maintained utility accounts in North Carolina, including a residential land line. Buttar has maintained multiple North Carolina addresses as his place of residence. Buttar married and began a family in North Carolina. Moreover, Buttar still maintains significant family ties to North Carolina as his ex-wife and children still live in the state. Buttar still receives mail, particularly legal documentation, in North Carolina. In fact, on April 20, 2018, Buttar's own attorney served notice on Buttar of a state court hearing at Buttar's North Carolina address. Buttar's sole bank account lists a North Carolina address. He has held an active North Carolina medical license since 1995, and this medical license is the only one he maintains. Buttar further declares that he has continued to maintain an active North Carolina pharmacy license since 1997. While records indicate that Buttar sold his former medical practice prior to the commencement of this action, the new business created when [his] practice was sold . . . is listed as [his] practice according to the North Carolina Secretary of State filings. Furthermore, evidence suggests that [Buttar] appears to maintain significant involvement in the medical practice, including serving as the supervising professional over others employed at or in contractual relationships with the medical practice. Additionally, and perhaps most importantly, Buttar is registered to vote in North Carolina and voted absentee in the November 2016 presidential election. This voter registration in itself raises a presumption that Buttar is a citizen of North Carolina.

(Citations and footnotes omitted). The court also acknowledged evidence of a possible domiciliary change, such as Buttar's lack of North Carolina-based property, contractual obligations, financial accounts, and tax obligations; his lack of a North Carolina driver's license; and his New Zealand address and permanent resident visa (on which Reddy proffered contrary evidence). But after considering the totality of the evidence, the court concluded that Buttar was a domiciliary of North Carolina at the time this action was commenced in April 2018.

On appeal, Buttar argues that the district court's analysis was flawed in "focus[ing] heavily on [his] past contacts" with North Carolina — evidence that he claims "merely constitutes the typical detritus left behind by a party who has recently moved from their former home of two decades" — and in placing undue weight on his voting record. But these critiques fail to identify clear error. Rather, they amount, at most, to quibbling with the court's discretionary weighing of evidence. Apart from these critiques, Buttar mounts no challenge to any fact found by the district court. In these circumstances, we do not find clear error in the district court's finding that Buttar was a North Carolina domiciliary when this action was commenced.

IV

Finally, on the merits of Reddy's motion for summary judgment, Buttar contends that there was a genuine issue of material fact that should have precluded the entry of summary judgment in Reddy's favor. He bluntly asserts that the agreement that Reddy produced to both the Singapore arbitrator and the district court was not authentic. Indeed,

he maintains "that this document is a forgery." Yet, when responding to the district court's observation that he had not presented evidence to support this claim, he only asserts, "Since the Agreement was allegedly agreed upon almost a decade ago — and [he] has moved to a different country since that time — [his] access to additional responsive documents has been limited." This may suffice as an explanation of why he has not produced evidence, but it hardly constitutes contrary evidence. Moreover, Buttar made the same claim to the arbitrator in Singapore, and the arbitrator, reviewing the relevant evidence, rejected it.

In his 42-page opinion, the arbitrator noted that following June 21, 2010, when the agreement was purportedly signed, Reddy sent an email to Buttar's lawyer, dated July 17, 2010, seeking confirmation regarding the mechanics of sending the monetary advances to Buttar in accordance with the agreement. Buttar's lawyer wrote back on July 19, 2010, and provided additional guidance on the matter. As provided in the agreement and arranged by the emails, Reddy thereafter sent Buttar seven payments over the next five months, totaling $1.55 million.

When the parties later learned that the property that was the subject of the agreement had in fact been transferred to an indigenous tribe before the agreement's execution, Buttar emailed Reddy on April 24, 2011, and provided him with options for "continu[ing] with our deal as it is." Reddy responded the next day that "the only option I can consider is . . . unwinding the [agreement]," and then, by an email of September 2, 2011, Reddy's counsel demanded that Buttar repay Reddy the $1.5 million that Reddy had advanced on the agreement. Buttar responded with a September 8, 2011 email stating that, "*[a]n agreement was reached between us in June 2010* for purchase of a property [within] 1 year to 18

months of owner financing." (Emphasis added). And in that email, Buttar also demanded that Reddy pay the remaining $1.5 million of the purchase price, plus interest, penalty fees, and reimbursement for expenses.

There was, during these exchanges, no comment, suggestion, or hint that the June 21, 2010 agreement was not the operative one between the parties. To the contrary, Buttar stated explicitly that "[a]n agreement was reached between us in June 2010 for purchase of a property," and the terms of the agreement were carried out for months after it was signed. Moreover, after Reddy sought to unwind the agreement, Buttar responded by vigorously *seeking to enforce it*.

Only after Reddy demanded arbitration, as authorized in the agreement, did Buttar challenge the authenticity of the agreement. Specifically, he argued to the arbitrator (1) that "[Reddy's] claim is based on a purchase agreement which [Reddy] did not sign" or, alternatively, (2) that the June 21, 2010 agreement "was not the latest version of the same and was just a working draft." The arbitrator, however, rejected both claims based on contemporaneous emails between Reddy and Buttar and the agreement itself, which he had before him. Indeed, he found Buttar's argument to be "disingenuous." In particular, the arbitrator pointed to Buttar's June 23, 2010 email to Reddy, which forwarded a mutually signed copy of the June 21, 2010 agreement and stated:

> Here is the [agreement] . . . that you asked for. A few of the last ad[d]endums were not signed because I didn't think they needed to be . . . but then I thought it would be better to sign the[m] than NOT sign them. So the hard copies being sent, *have all the pages signed*. They did not get out today due to missing the deadline for Fed Ex but all papers are signed, witnessed and completed . . . . Thanks Rachan. And Congratulations! BTW [by the way], I'm definitely having some "seller's remorse."

(Emphasis added by the arbitrator). The arbitrator saw the agreement that was sent by Buttar to Reddy and found that it "showed all pages thereof duly signed and initialed at every page by both parties." He thus rejected Buttar's arguments as a matter of fact.

Those factual findings, we would think, should at least be given deference. *Cf. Upshur Coals Corp. v. United Mine Workers of Am., Dist. 31*, 933 F.2d 225, 229 (4th Cir. 1991) (stating that an arbitrator's findings of fact should be "accorded great deference"). Nonetheless, Buttar pressed the same arguments before the district court and continues to do so before us. Yet, he has adduced *no* evidence besides his own conclusory deposition testimony to support his contention that Reddy supplied either the wrong document or a forged version of the agreement. Specifically, in his deposition, he testified (1) that he does not presently possess a copy of the alleged alternative agreement that he claims was operative; (2) that he does not know whether a copy of that alternative agreement still exists; (3) that if such a copy does exist, it is "somewhere in storage in either North Carolina or in Texas"; and (4) that he has made no effort to find the alternative agreement.

To be sure, the summary judgment standard demands that summary judgment be denied when the party opposing a properly supported motion — here, Buttar — shows the existence of a genuine dispute as to a material fact. *See* Fed. R. Civ. P. 56(a). But in establishing such a genuine dispute, the party opposing the motion must rely on more than "conclusory allegations." *Dash v. Mayweather*, 731 F.3d 303, 311 (4th Cir. 2013). Buttar's unsupported claims of forgery and the existence of an alternative agreement do not clear that threshold. *See, e.g.*, *Wadley v. Park at Landmark LP*, 264 F. App'x 279, 281 (4th Cir. 2008) (per curiam) (concluding that a nonmovant's "own self-serving,

unsubstantiated statements in opposition to [the movants'] evidence . . . is insufficient to stave off summary judgment"). Moreover, Buttar never addresses the undisputed communications he had with Reddy after the June 21, 2010 agreement that confirm, as the arbitrator found, that the agreement is authentic and was signed by both parties. Nor does he explain why he received monies under the agreement and sought, by virtue of the agreement, to receive the remainder of the purchase price.

At bottom, we conclude that the district court did not err in granting Reddy's motion for summary judgment.

AFFIRMED