

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 05 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RUBEN ACEVES; JOSE CASTILLO;
BECKY CHENIER; SEAN CHENIER;
GERRY EBERLY; MARICELA
GARCIA; RUTH GARCIA; SOLDEDAD
GARDUNO; ELIZABETH GUTIERREZ;
ELMER MANCIA; VERONICA
MARTINEZ; MIGUEL MEJIA; MARIA
PEREZ; WILLIAM RIVERA;
ABELARDO SAIZ; LORENA SOLIS;
DEBRA WINSTON; TED WINSTON, on
their own behalf and on behalf of all others
similarly situated,

Plaintiffs - Appellees,

v.

AUTONATION, INC., a Delaware
corporation; MR. WHEELS, INC., a
California corporation d/b/a Power Toyota
Cerritos,

Defendants - Appellants.

No. 07-55014

D.C. No. CV-06-05806-GPS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George P. Schiavelli, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Submitted April 10, 2008**
Pasadena, California

Before: GOODWIN, PREGERSON, and D.W. NELSON, Circuit Judges.

Autonation and Mr. Wheels, Inc. d/b/a/ Power Toyota Cerritos (collectively “Autonation”) appeal a district court’s denial of their motion to compel arbitration. The district court had jurisdiction pursuant to 28 U.S.C. § 1331 because Autonation had previously removed the case, which alleged a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et. seq.*, to federal court. We exercise jurisdiction pursuant to 9 U.S.C. § 16(a)(1)(A)-(B), and we reverse and remand with instructions for the district court to compel arbitration regarding the scope of the arbitration agreement.

“[T]he question ‘who has the primary power to decide arbitrability’ turns upon what the parties agreed about *that* matter.” *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995). “Generally, the question of whether a dispute is arbitrable is decided by the courts. However, where the parties clearly and unmistakably provide otherwise, the courts will be divested of their authority and an arbitrator will decide in the first instance whether a dispute is arbitrable.”

** The panel unanimously finds this case suitable for submission without oral argument. Fed. R. App. P. 34(a)(2).

United Bhd. of Carpenters & Joiners of Am., Local No. 1780 v. Desert Palace, Inc., 94 F.3d 1308, 1310 (9th Cir. 1996) (internal quotation marks and citations omitted).

In this case the parties agreed “that any claims arising from or relating to this Lease or related agreements or relationships, including the validity, enforceability or scope of this Arbitration Provision, at your or our election, are subject to arbitration.” Multiple courts have found that similar language clearly and unmistakably empowers the arbitrator to decide questions of scope in the first instance. In *Rodriguez v. Am. Techs., Inc.*, 39 Cal. Rptr. 3d 437, 446 (Ct. App. 2006), an arbitration provision met this standard by incorporating the American Arbitration Association’s Construction Industry Rules, which specify that the “arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.” Similarly in *In re Currency Conversion Fee Antitrust Litig.*, 265 F. Supp. 2d 385, 404 (S.D.N.Y. 2003), a court found a provision assigning any dispute “arising out of or relating to this Agreement, your Account, or the validity or scope of any provision of this Agreement” to be clear and unmistakable. Like the arbitration provisions at issue in the *Rodriguez* and *Currency Conversion Fee*,

the provision at issue in this case explicitly assigns questions of “scope” and “validity” to the arbitrator.

We decline to reach the additional issues argued on appeal because those issues require a determination of the scope of the agreement, which the arbitrator must decide in the first instance.

We REVERSE and REMAND with instructions for the district court to COMPEL ARBITRATION regarding the scope of the arbitration agreement.