

I

CVN Group, Inc. furnished Enrique and Marjorie Delgado labor and materials under a written contract for construction of their home. The contract provided that “[c]laims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration” Before construction was completed, the Delgados instructed CVN to cease work. CVN asserted that the Delgados had materially breached the contract and demanded arbitration.

An arbitrator was appointed, and the parties submitted their dispute on documents and briefs without live testimony, as they had agreed to do in their contract.² CVN requested \$156,865.74 in damages, plus interest and attorney fees, and “an award establishing a valid lien against [the Delgados’] homestead.” The Delgados responded that they were not indebted to CVN and that its lien claims were invalid because CVN filed its lien affidavit late and did not record their contract, citing sections 53.052(b) and 53.254(e) of the Property Code.³ CVN replied that its lien affidavit had been timely filed and the contract properly recorded. The Delgados raised no other defenses to CVN’s lien claims and did not challenge the arbitrator’s authority to decide their validity. The arbitrator awarded CVN \$110,925.10 and

² “Unless otherwise agreed to in writing by all parties to this Agreement, all arbitration proceedings arising out of or relating to this Agreement shall be decided by documents exchanged between the parties and submitted to the arbitrator or arbitrators and without a formal hearing at which the parties would typically be required to appear in person. . . . Testimony submitted by persons or entities not a party to this Agreement shall be by sworn affidavit.”

³ TEX. PROP. CODE § 53.052(b) (“A person claiming a lien arising from a residential construction project must file an affidavit with the county clerk of the county in which the property is located not later than the 15th day of the third calendar month after the day on which the indebtedness accrues.”); § 53.254(e) (“The contract must be filed with the county clerk of the county in which the homestead is located. The county clerk shall record the contract in records kept for that purpose.”).

found “valid statutory^[4] and constitutional^[5] mechanic’s liens for the full award”.⁶ The parties were entitled to request findings of fact and conclusions of law, but no one did, and none were made.

CVN applied to the district court to confirm the award and foreclose its mechanic’s liens.⁷ The Delgados answered that the award should be vacated or modified because, in their words, the award was “manifestly unjust and constituted usury”, “there was absolutely *no evidence* presented by [CVN] that the lien satisfied the necessary constitutional and statutory provisions”, and “[t]he lien granted to [CVN] in the arbitration award violates [the Delgados’] constitutional rights, exceeds the Arbitrator’s powers, and is unenforceable as an unconstitutional lien on [the Delgados’] homestead.” The Delgados also sought a declaration that CVN was not entitled to foreclose its mechanic’s liens because the arbitrator had denied that relief. The trial court reviewed the arbitration record and concluded that the award should be reduced to \$22,775.10, and that CVN was not entitled to foreclose its mechanic’s liens. Regarding CVN’s lien claims, the court found that:

C CVN “failed to comply with applicable constitutional and statutory requirements for obtaining a lien on [the Delgados’] homestead, [and therefore] the Arbitrator exceeded his powers and/or authority in granting [CVN] an unconstitutional lien against [the Delgados’] homestead”;

⁴ *Id.* §§ 53.001-.260.

⁵ TEX. CONST. art. XVI, § 37 (“Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.”); *id.* § 50(a) (“The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . . (5) work and material used in constructing new improvements thereon, if contracted for in writing”); *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578 (Tex. 2000); *Strang v. Pray*, 35 S.W. 1054, 1056 (Tex. 1896).

⁶ *CVN Group Inc. v. Delgado*, Amer. Arb. Ass’n Matter No. 70 110 00278 98 (Sept. 29, 1999, modified Nov. 22, 1999).

⁷ TEX. CIV. PRAC. & REM. CODE §§ 171.001-.098.

- C “[i]t was undisputed in the evidence and argument submitted to the Arbitrator that the written contract between [CVN] and [the Delgados] was not acknowledged as required by the Texas Constitution”, that “the written contract was not recorded . . . as required by applicable law”, and that CVN “failed to timely file its lien affidavit as required by applicable law”;
- C “the constitution and statutory protection afforded homesteads constitutes a fundamental public policy which allows this Court to vacate/modify/correct an arbitration award which is in violation of such fundamental public policy”;
- C absent evidence supporting an arbitration award creating a lien on a homestead, foreclosure would violate the Texas Constitution.

The trial court rendered judgment accordingly.

CVN appealed. The court of appeals reversed the trial court’s reduction of the damages in the arbitration award but affirmed the trial court’s refusal to foreclose CVN’s mechanic’s liens awarded by arbitration.⁸ Noting that the Legislature in the Property Code had imposed a number of requirements for perfecting mechanic’s liens on homesteads, the appeals court reasoned:

A mechanic’s and materialman’s lien may only be foreclosed on, and a sale ordered by, judicial action [citing section 53.154 of the Property Code⁹]. . . . In order to safeguard the homestead protection, and comply with the legislative intent expressed in the Property Code, a court should review the validity of the lien prior to ordering or denying foreclosure.¹⁰

Reviewing the arbitration record, the court concluded that CVN had failed to prove that it had filed an acknowledged contract as required by section 53.254(e) of the Property Code, or timely filed a lien

⁸ 47 S.W.3d at 159.

⁹ TEX. PROP. CODE § 53.154 (“A mechanic’s lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.”).

¹⁰ 47 S.W.3d at 164-165.

affidavit as required by section 53.052(b) of the Property Code.¹¹ The court went further and concluded that CVN had also failed to prove that its contract with the Delgados had been signed before material was furnished or work performed as required by section 53.254(b) of the Property Code.¹² The Delgados had not argued in their brief to the arbitrator that the contract was not acknowledged, nor had they argued to the arbitrator or the trial court that they had signed their contract after work had begun. The appeals court held that because “the power of foreclosure of a mechanic’s and materialman’s lien lies exclusively with the judiciary”, “[t]he trial court’s decision to investigate the validity, and to refuse the foreclosure of CVN’s mechanic’s and materialman’s lien on the Delgados’ homestead was proper.”¹³

CVN petitioned this Court for review of the court of appeals’ refusal to order its mechanic’s lien foreclosed.¹⁴ The Delgados have not petitioned for review of the confirmation of the arbitration award of damages.

II

The Delgados do not argue that issues relating to the validity of CVN’s claimed mechanic’s liens are outside the scope of their agreement to arbitrate, which was clearly broad enough to encompass such issues. Nor do they argue that there are statutory grounds to vacate¹⁵ or modify¹⁶ the arbitration award.

¹¹ *Id.* at 165-166.

¹² *Id.* at 166.

¹³ *Id.* at 166-167.

¹⁴ 45 Tex. Sup. Ct. J. 412 (Feb. 28, 2002).

¹⁵ TEX. CIV. PRAC. & REM. CODE § 171.088(a) (“On application of a party, the court shall vacate an award if: (1) the award was obtained by corruption, fraud, or other undue means; (2) the rights of a party were prejudiced by: (A)

Rather, they argue that the “*common law* allows (and may even require) a court to overturn an arbitrator’s award that is unconstitutional or otherwise violates public policy.”

In 1936, we held in *Smith v. Gladney*, that “a claim arising out of an illegal transaction . . . is not a legitimate subject of arbitration, and an award based thereon is void and unenforceable in courts of the country.”¹⁷ The claim there was for a debt that was incurred trading in futures on the Chicago Board of Trade, what we called “a gambling transaction”. We have not had occasion to revisit the subject of when judicial enforcement of arbitration awards must be withheld for reasons of legal or public policy, but two courts of appeals have weighed in. One court refused to uphold an arbitration award upholding the termination of an employee for filing criminal assault charges against a supervisor in violation of a collective bargaining agreement that required exhaustion of grievance procedures before bringing “suit or other action”, concluding that the arbitration award was “repugnant to both federal and state public policy to the extent that it forces employees using the grievance procedure to delay the filing of criminal charges growing

evident partiality by an arbitrator appointed as a neutral arbitrator; (B) corruption in an arbitrator; or (C) misconduct or wilful misbehavior of an arbitrator; (3) the arbitrators: (A) exceeded their powers; (B) refused to postpone the hearing after a showing of sufficient cause for the postponement; (C) refused to hear evidence material to the controversy; or (D) conducted the hearing, contrary to Section 171.043, 171.044, 171.045, 171.046, or 171.047, in a manner that substantially prejudiced the rights of a party; or (4) there was no agreement to arbitrate, the issue was not adversely determined in a proceeding under Subchapter B, and the party did not participate in the arbitration hearing without raising the objection.”).

¹⁶ *Id.* § 171.091(a) (“On application, the court shall modify or correct an award if: (1) the award contains: (A) an evident miscalculation of numbers; or (B) an evident mistake in the description of a person, thing, or property referred to in the award; (2) the arbitrators have made an award with respect to a matter not submitted to them and the award may be corrected without affecting the merits of the decision made with respect to the issues that were submitted; or (3) the form of the award is imperfect in a manner not affecting the merits of the controversy.”).

¹⁷ 98 S.W.2d 351, 351 (Tex. 1936).

out of the subject matter of the grievance until the grievance procedure has been exhausted.”¹⁸ The other court refused to confirm an arbitration award of damages for unused sick leave in violation of article III, section 53 of the Texas Constitution, which prohibits a grant of extra compensation after service had been rendered.¹⁹ Neither of these courts of appeals was called upon to consider whether common law grounds for refusing to confirm arbitration awards have been preempted by statutes governing arbitration,²⁰ nor have the parties raised that issue here. Accordingly, we assume the law is as we stated it in *Smith*.

Subject to this assumption, one can readily see that an illegal contract unenforceable by litigation should not gain legitimacy through arbitration. A debt that indisputably arises from gambling, for example, should have no greater claim to judicial enforcement by confirmation of an arbitration award than by litigation. Judicial participation in the collection of the debt by either mechanism is precluded by public policy. On the other hand, it is no more against policy to arbitrate *whether* a debt has arisen from gambling or some other activity rendering it unenforceable, as opposed to some legitimate activity, than it is to litigate the same issue. It is one thing for a court to refuse to confirm an arbitration award that is expressly based on a legally unenforceable obligation, as we did in *Smith*; it is quite another thing for a court to re-examine whether an arbitrator has correctly determined that an obligation is not of the sort that is legally unenforceable. These are the clearer ends of a broad spectrum of cases in some of which a court should

¹⁸ *Goodyear Tire & Rubber Co. v. Sanford*, 540 S.W.2d 478, 484 (Tex. Civ. App.—Houston [14th Dist.] 1976, no writ).

¹⁹ *Lee v. El Paso County*, 965 S.W.2d 668, 673 (Tex. App.—El Paso 1998, pet. denied).

²⁰ *Cf.* TEX. CIV. PRAC. & REM. CODE § 171.087 (“Unless grounds are offered for vacating, modifying, or correcting an award under Section 171.088 or 171.091, the court, on application of a party, shall confirm the award.”).

not ignore the plain character of an award, no matter how the arbitrator characterized it, and in others of which a court should not be permitted to reassess an arbitrator's decision on disputed evidence regarding the character of the obligation.

Subjecting arbitration awards to judicial review adds expense and delay, thereby diminishing the benefits of arbitration as an efficient, economical system for resolving disputes. Accordingly, we have long held that “an award of arbitrators upon matters submitted to them is given the same effect as the judgment of a court of last resort. All reasonable presumptions are indulged in favor of the award, and none against it.”²¹ The United States Supreme Court has held in the context of labor law that to set aside an arbitration award as contrary to public policy, that policy “must be well defined and dominant, and is to be ascertained ‘by reference to the laws and legal precedents and not from general considerations of supposed public interests.’”²² In another case it reiterated that “a formulation of public policy based only on ‘general considerations of supposed public interests’ is not the sort that permits a court to set aside an arbitration award that was entered in accordance with a valid collective-bargaining agreement.”²³ In both cases the Court also held that any claimed violation of such public policy must be carefully scrutinized to protect the arbitration award from unwarranted judicial interference.²⁴ In neither case did the Court find a violation of public policy.

²¹ *City of San Antonio v. McKenzie Constr. Co.*, 150 S.W.2d 989, 996 (Tex. 1941).

²² *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983) (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)).

²³ *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 44 (1987).

²⁴ See *W.R. Grace*, 461 U.S. at 767-768; *United Paperworkers*, 484 U.S. at 44-45.

We agree that an arbitration award cannot be set aside on public policy grounds except in an extraordinary case in which the award clearly violates carefully articulated, fundamental policy. The Delgados argue, and the court of appeals determined, that the policy at stake in the present case is protection of the homestead. The homestead is given special protections in the Texas Constitution²⁵ and in the Property Code provisions dealing with mechanic's liens.²⁶ An arbitration award made in direct contravention of those protections would violate public policy. Thus, had the arbitrator wholly disregarded the constitutional and statutory requirements for perfecting a mechanic's lien on a homestead and held that a lien should be valid without regard to such requirements, the award would contravene public policy. The mechanic's liens awarded CVN do not contravene constitutional and statutory protections. The Delgados' arguments that CVN had failed to satisfy two of the requirements for perfecting its liens were disputed by CVN and were submitted to the arbitrator and decided on evidence and briefs. The Delgados argue that the arbitrator was wrong and the lower courts agreed, but an arbitrator's mere disagreement with a judge does not violate public policy. Nothing in the arbitration proceeding indicates that the arbitrator completely disregarded the requirements for perfecting mechanic's liens.

III

The dissent makes a broader argument than do the Delgados. The dissent contends that the validity of mechanic's liens can never be arbitrated, regardless of the parties' agreement or whether a homestead is involved, because of section 53.154 of the Property Code which provides that, unlike some other liens,

²⁵ TEX. CONST. art. XVI, § 50.

²⁶ TEX. PROP. CODE § 53.254.

“[a] mechanic’s lien may be foreclosed only on judgment of a court”.²⁷ The dissent extrapolates from this requirement of judicial foreclosure that courts are the exclusive arbiters of whether the technical requirements for perfecting a mechanic’s lien have been satisfied.

Nothing in the language or history of section 53.154 supports the dissent’s position. The statutory language dates back to 1871, when the Legislature enacted a statute providing that the sale of property to satisfy a mechanic’s lien was “to be upon judgment rendered by some court of competent jurisdiction foreclosing such lien and ordering sale of such property.”²⁸ By that time, arbitration was already well entrenched in Texas procedure. The 1869 Constitution required the Legislature to pass laws facilitating arbitration, which it called a “method of trial,”²⁹ as had the 1845 Constitution.³⁰ In 1856 this Court had described arbitration as “a mode of trial guaranteed by the Constitution and regulated by statute . . . as effectual to settle finally and conclusively the rights of parties as any other mode of trial known to the law.”³¹

²⁷ TEX. PROP. CODE § 53.154 (“A mechanic’s lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.”).

²⁸ Act approved Nov. 17, 1871, 12th Leg., 2d Sess., ch. 34, § 3, 1871 Tex. Gen. Laws 28, 29, *reprinted in* 7 H.P.N. GAMMEL, THE LAWS OF TEXAS 1871-1873, at 30, 31 (Austin, Gammel Book Co. 1898).

²⁹ TEX. CONST. of 1869, art. XII, § 11 (“It shall be the duty of the Legislature to pass such laws as may be necessary and proper, to decide differences by arbitration, when the parties shall elect that method of trial.”).

³⁰ TEX. CONST. of 1845, art. VII, § 15 (“It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial.”). *See generally* Paul Carrington, *The 1965 General Arbitration Statute of Texas*, 20 SW. L.J. 21, 23 (1966); Peter F. Gadza, *Arbitration: Making Court-Annexed Arbitration an Attractive Alternative in Texas*, 16 ST. MARY’S L.J. 409, 422-423 (1985).

³¹ *Forshey v. G.H. & H. Railroad Co.*, 16 Tex. 516, 539 (1856).

Nothing in this historical record suggests that the Legislature mistrusted arbitration to determine the validity of mechanic's liens.

Nor does it make sense that the Legislature, in order to protect judicial discretion in foreclosing mechanic's liens, would insist on a judicial determination of technical issues — in this case, for example, whether the contract and lien affidavit were timely — while leaving the more substantive issues regarding the extent of performance and the existence and amount of a debt to arbitration. Moreover, for constitutional liens that are self-executing, there are no technical requirements,³² and therefore under the dissent's theory, no judicial discretion is preserved at all. The dissent does not attempt to explain why the Legislature would want to preserve judicial discretion in foreclosing statutory mechanic's liens but not in foreclosing constitutional mechanic's liens.

The dissent argues that because the Texas Arbitration Act is to be construed uniformly with other states' arbitration laws,³³ and because other states do not permit the validity of a mechanic's lien to be arbitrated, Texas should follow the other states' construction of their own arbitration statutes. It is the minor premise of this syllogism that is flawed: not one reported case in the United States has ever *held* that the validity of a mechanic's lien cannot be arbitrated between the parties to the arbitration agreement.

³² See note 5 *supra*.

³³ TEX. CIV. PRAC. & REM. CODE § 171.003 (“This chapter shall be construed to effect its purpose and make uniform the construction of other states’ law applicable to an arbitration.”).

As the “seminal case in this area”,³⁴ the dissent cites the 1934 decision of the New York Court of Appeals in *Brescia Construction Co. v. Walart Construction Co.*³⁵ There, Walart had discharged Brescia’s mechanic’s lien by posting a bond as permitted by law. Brescia sued Walart and the surety on the bond, New Amsterdam Casualty Co., to foreclose its lien on the bond, as it was required to do by statute.³⁶ Brescia and Walart had agreed to arbitrate “all questions” relating to their contract and the work performed, but New Amsterdam was not a party to this agreement. The trial court ordered arbitration concerning only what amount was owed Brescia, not whether its lien had been validly perfected. Nevertheless, the arbitrators issued an award that determined not only the amount owed but the validity of the lien, thereby deciding New Amsterdam’s obligation to pay. The court of appeals held that New Amsterdam was bound by the arbitrators’ determination of the amount owed because it had agreed as surety to pay whatever debt Walart was determined to owe Brescia, but was not bound by the arbitrators’ determination of the validity of Brescia’s lien because New Amsterdam had never agreed to arbitrate those issues, there was no statute compelling it to do so, and the issues were outside the scope of the trial court’s

³⁴ *Post* at ____.

³⁵ 190 N.E. 484 (N.Y. 1934).

³⁶ N.Y. LIEN LAW § 41 (McKinney 2002) (“A mechanic's lien on real property may be enforced against such property, and against a person liable for the debt upon which the lien is founded, by an action, by the lienor, his assignee or legal representative, in the supreme court or in a county court otherwise having jurisdiction, regardless of the amount of such debt, or in a court which has jurisdiction in an action founded on a contract for a sum of money equivalent to the amount of such debt.”).

order of referral. “It may be,” the court observed, “that the adjudication of the amount due [Brescia] will leave no substantial issues to be tried in the action [to foreclose its lien].”³⁷

Brescia thus stands only for the wholly unremarkable conclusion that a party is not bound by an arbitration to which it did not agree and which was not required by statute or order. The dissent is incorrect when it states that in *Brescia* “the contract between *the parties* contained a broad arbitration provision”, that “[*t*]he *parties* submitted the dispute to arbitration”, and that “because *the parties* agreed in the construction agreement to arbitrate disputes arising under the contract, the surety could not object”.³⁸ New Amsterdam, the surety, was a party to the litigation — indeed, it was *the* party against whom *Brescia* sought to obtain judgment — and it neither submitted nor agreed to submit any issue for arbitration. Although New York law, like Texas law, required judicial foreclosure of a mechanic’s lien, *Brescia* does not suggest that that requirement placed issues relating to the validity of the lien beyond arbitration. *Brescia* deals with the scope of an arbitration agreement and a court order requiring arbitration; it says nothing about statutory or other policy.

Brescia’s acknowledgment that arbitrating the amount owed would likely “leave no substantial issues to be tried” regarding perfection of a lien undercuts the dissent’s argument that reserving those issue for litigation preserves important judicial discretion in foreclosing mechanic’s liens. The observation is one that is entirely obvious: once the debt issues are resolved, technical preservation issues are usually of little moment.

³⁷ 190 N.E. at 487.

³⁸ *Post* at ____, ____ (emphasis added).

The dissent cites strings of cases to show that debt issues can be separated from lien-preservation issues, which, of course, they can. For the proposition that lien validity issues are not arbitrable, however, the dissent cites six cases and two commentaries.³⁹ One case holds that the parties did not agree to arbitrate the validity of a lien,⁴⁰ three cases hold that an agreement to arbitrate does not waive the right to a mechanic's lien,⁴¹ one case holds that an arbitration agreement does not divest a court of jurisdiction to foreclose a mechanic's lien,⁴² and one case holds that some of the attorney fees incurred in arbitration can be awarded in a suit to foreclose a mechanic's lien.⁴³ The commentaries state that *if* only the amount of the debt secured by a mechanic's lien is arbitrated, the arbitrator may not be in a position to find whether the procedural requirements for perfecting a lien have been met,⁴⁴ and the validity of the lien must be litigated.⁴⁵ No authority the dissent cites, and none we have found, holds that issues related to the validity

³⁹ *Post* at ____.

⁴⁰ *B & M Constr., Inc. v. Mueller*, 790 P.2d 750 (Ariz. Ct. App. 1989).

⁴¹ *Sorg v. Crandall*, 84 N.E. 181 (Ill. 1908) (per curiam); *Buckminster v. Acadia Village Resort, Inc.*, 565 A.2d 313 (Me. 1989); *Pine Gravel, Inc. v. Cianchette*, 514 A.2d 1282 (N.H. 1986).

⁴² *Mills v. Robert W. Gottfried, Inc.*, 272 So. 2d 837 (Fla. Dist. Ct. App. 1973).

⁴³ *Harris v. Dyer*, 637 P.2d 918 (Or. 1981), *aff'g as modified*, 623 P.2d 662 (Or. Ct. App. 1981).

⁴⁴ JUDAH LIFSCHITZ & RANDAL W. MAX, *MECHANIC'S LIENS, CONSTRUCTION BRIEFINGS* (2d ed. 2000) ("Keep in mind that different questions may be at issue in an arbitration proceeding and a mechanics' lien proceeding. Thus, even if an arbitration is rendered in the lien claimant's favor, that award may not establish all the facts necessary to enforce the lien. For example, to enforce a lien there must be notice on the proper owner as required by the statute and a public filing of the claim. An arbitrator generally is not in a position to find that these procedural requirements have been met." (Footnote omitted.)).

⁴⁵ John G. McGill, *Liens and Arbitration*, 13 APR CONSTR. LAW, 2, at 14 (1993) ("In coordinated proceedings, the arbitration will be used to establish the amount of the lien. The subsequent lien proceedings will consider any technical defenses to the right to a mechanic's lien, then calculate the amount of the lien using the prior arbitration award.").

of a mechanic's lien cannot be arbitrated if the lien must be judicially foreclosed. Therefore, uniformity of Texas arbitration law with other states' laws does not prohibit lien validity issues from being arbitrated.

The dissent argues that a judicial determination of the validity of a mechanic's lien is necessary to protect the homestead. As we have already observed, there is nothing in the statutory history to support this view. Furthermore, to the obvious question — why are homestead rights adequately protected if the most significant issues are arbitrated and the least significant litigated — the dissent has no answer. Were there an answer to this question (there is none), and were there some explanation for the necessity of protecting homestead rights from arbitration (there is none), and were it shown that that protection is not secured by a trial court's authority to refuse to confirm an award contrary to public policy (it has not been), the dissent's argument still does not justify requiring a judicial determination of technical lien perfection issues in *non-homestead* cases, which many, if not most, are. Nothing suggests that the Legislature has required judicial foreclosure of mechanic's liens on non-homestead property in order to protect homesteads.

Two Texas cases, *Dalton Contractors, Inc. v. Bryan Autumn Woods, Ltd.*⁴⁶ and *Hearthshire Braeswood Plaza, Ltd. Partnership v. Bill Kelly Co.*,⁴⁷ have concluded that the parties affected by a mechanic's lien can agree to arbitrate its existence. We agree with their conclusion.

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⁴⁶ 60 S.W.3d 351, 354 (Tex. App.—Houston [1st Dist.] 2001, no pet.).

⁴⁷ 849 S.W.2d 380, 390-391 (Tex. App.—Houston [14th Dist.] 1993, writ denied).

The validity of CVN's lien claim was within the scope of its arbitration agreement with the Delgados, and the arbitrator's award does not violate public policy. It should be confirmed in its entirety. Accordingly, the judgment of the court of appeals is reversed and the case is remanded to the trial court for further proceedings consistent with this opinion.

Nathan L. Hecht
Justice

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