VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of August, 2019.

Present: Chief Justice Lemons, Justice Goodwyn, Justice Mims, Justice Powell, Justice Kelsey, Justice McCullough, and Senior Justice Russell

Susan Courtney, Appellant,

against Record No. 180643
Circuit Court No. CL2016-12947

Gaby Touma, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is reversible error in the judgment of the circuit court.

In May 2016, Susan Courtney ("Courtney") purchased a car from GN Auto, LLC ("GN Auto"), a used car dealership in Chantilly, Virginia. After discovering problems with the car, Courtney filed a complaint in the Circuit Court of Fairfax County against GN Auto and Gaby Touma ("Touma"), the owner of GN Auto.

Zach Byrd ("Byrd"), the manager of GN Auto, retained attorney David Mahdavi ("Mahdavi") to represent GN Auto. Mahdavi subsequently filed a motion to compel arbitration on behalf of GN Auto, relying on an arbitration provision in the sales contract (the "arbitration provision"). The arbitration provision provides that either party to the sales contract "may elect to resolve any Claim by neutral, binding arbitration and not by a court action" and defines the term "Claim" as "any claim, dispute or controversy between you and us or our employees, agents, successors, assigns or affiliates arising from or relating to . . . the condition of the Property."

Mahdavi also filed a separate motion to compel arbitration on behalf of Touma. This motion asserted that Touma could enforce the arbitration provision because the claims asserted by Courtney arose solely out of acts committed in connection with the sale of the vehicle. The

motion further claimed that Touma could enforce the arbitration provision under agency principles and equitable estoppel. The circuit court granted the motions to compel arbitration and referred the matter to arbitration through the McCammon Group ("TMG").

On May 9, 2017, Mahdavi emailed Byrd and Touma with the proposed dates for the arbitration. In his email, Mahdavi stated that "[Touma] MUST be present because he is an individually named defendant. In addition, we can have one representative for GN Auto." Additionally, on May 11, 2017, Courtney emailed Mahdavi her discovery requests for both GN Auto and Touma. A week later, on May 18, 2017, Mahdavi forwarded the email to Byrd and Touma and informed them that they would need "to get together" to respond to both sets of discovery requests. Touma responded to the email with the date and times that would be most convenient for him.

On June 9, 2017, GN Auto replaced Mahdavi with Westlake Legal Group ("Westlake"). J. Daniel Griffith ("Griffith"), an attorney at Westlake, was assigned to the case. Touma signed the Westlake retainer agreement on behalf of GN Auto. An order of substitution drafted and submitted by Griffith was subsequently entered in the arbitration. The order specifically stated "that the Defendants have retained J. Daniel Griffith, Esq. of Westlake Legal Group to represent them."

On August 4, 2017, Griffith emailed Touma, stating:[1]

> I've begun the process to get out of arbitration. The main thing you'll need to worry about with the cases going forward is that judgments agains[t] the LLC are likely fine, since there will be no assets in the LLC to cover them. But, you'll have to contest any cases that seek personal liability to avoid default judgments and attempts to collect against your personal assets.

On September 13, 2017, the arbitrator found Touma and GN Auto in default for failure to comply with discovery rulings. A hearing limited to the issue of damages was subsequently held and, on October 4, 2017, the arbitrator entered an award of $87,062.96 for Courtney. In the order, the arbitrator certified that he "forwarded a copy of this Award to Counsel via facsimile

[1] After oral argument, Touma asserted that the August 4, 2017 email "was not part of the evidentiary record, or presented at the hearing, in the case below." This assertion is clearly rebutted by the fact that Touma made the August 4, 2017 email a part of the record when he included it as an attachment to his Brief in Support of Defendant's Response to Plaintiff's Motion to Enforce Arbitration Award filed on January 24, 2018.

transmission" on that same date. Touma was personally informed of the arbitration award on November 14, 2017, when he met with attorneys from Westlake.

On January 18, 2018, Touma filed a motion to vacate the arbitration award entered against him personally. According to Touma, he did not agree to arbitrate the claims brought against him in an individual capacity and never retained counsel to represent him regarding any of the claims brought against him until November 14, 2017 when he met with attorneys from Westlake.

At an evidentiary hearing on his motion, Touma testified that he never hired an attorney to represent him in his individual capacity until November 14, 2017, when he received a copy of the arbitration award. Touma acknowledged that TMG's Agreement to Arbitrate had a signature line for him that contained a signature, but he denied that the signature was his and he claimed that he did not authorize anyone to sign it on his behalf. He also stated that he never discussed the individual claims against him with either Mahdavi or Griffith. He did, however, admit that both attorneys sent communications to his personal email. Touma asserted that he believed that all of his communications with the attorneys related to his role as owner of GN Auto and not as an individual defendant.

At the conclusion of the evidence, the circuit court ruled that, because only GN Auto was listed in the retainer agreements as the client, neither Mahdavi nor Griffith represented Touma in his personal capacity. As such, the circuit court ruled that Touma was not represented by counsel prior to November 14, 2017. It further noted that Code § 8.01-581.010 states that a motion to vacate an arbitration award must be filed within 90-days of the delivery of the award to the "applicant" and makes no mention of delivery to an attorney. According to the circuit court, use of the term "applicant" indicates that the 90-day time period does not begin to run until the award is delivered to the actual party, not counsel for the party. Therefore, the circuit court ruled that the time period did not begin in this case until November 14, 2017 when Touma personally received the arbitration award. As a result, the motion to vacate was deemed timely.

The circuit court subsequently granted Touma's motion to vacate the arbitration award, ruling that there was no arbitration agreement with Touma because he had not signed TMG's Agreement to Arbitrate.

In her appeal, Courtney argues that the circuit court erred in ruling that no attorney was representing Touma in his personal capacity until November 14, 2017. An attorney-client

relationship is contractual in nature, *see Cox v. Geary*, 271 Va. 141, 152 (2006), and the existence of a contract is a question of law that is reviewed de novo. *Mission Residential, LLC v. Triple Net Props., LLC*, 275 Va. 157, 161 (2008). In the present case, the circuit court made a single factual finding that Touma did not enter into a written retainer agreement with either Mahdavi or Griffith and, based on that finding, the circuit court ruled that Touma was not represented by an attorney at any point prior to November 14, 2017. However, the lack of a retainer agreement alone is not dispositive of the existence of an attorney-client relationship. As this Court has recognized:

> Formality is not an essential element of the employment of an attorney. The contract may be express or implied, and it is sufficient that the advice and assistance of the attorney is sought and received, in matters pertinent to his profession.

Nicholson v. Shockey, 192 Va. 270, 276–77 (1951).

The record in the present case demonstrates, at a minimum, the existence of an implied contract between Touma and Griffith for individual representation.[2] Specifically, the August 4, 2017 email indicates that Touma sought and received advice and assistance from Griffith regarding his personal liability in this case. Further, it is telling that Griffith represented to the arbitrator that he had been retained as counsel for both GN Auto and Touma by drafting and submitting an order of substitution stating "that the *Defendants* have retained J. Daniel Griffith, Esq. of Westlake Legal Group to represent *them*." (Emphasis added.) By taking such an action, Griffith clearly indicated that both Touma and GN Auto had sought his assistance as an attorney and that he had agreed to provide that assistance. In light of this evidence, it is apparent that an implied contract for representation existed between Touma and Griffith. Accordingly, the circuit court erred in holding that Touma was not represented prior to November 14, 2017.

Courtney further argues that the circuit court erred in ruling that, under Code § 8.01-581.010, the time period for filing a motion to vacate an arbitration award begins upon delivery of the award to the party and not to counsel for the party. In reaching its conclusion on this

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[2] There is also evidence that an implied contract for individual representation existed between Touma and Mahdavi. Most notably, Mahdavi explained to Touma that he would need to appear at the arbitration because he was being sued in his individual capacity. Further, there are the emails from Mahdavi to Touma regarding the discovery requests related to the individual claims against him. However, for the reasons discussed below, it is the attorney-client relationship that existed between Touma and Griffith that is dispositive in the present case.

issue, the circuit court ruled that the use of the term "applicant" in the statute indicated that the legislature intended for the delivery to be made specifically to the party before the 90-day time period to file a motion to vacate the arbitration award began. The plain language of Code § 8.01-581.010 does not support the circuit court's conclusion.

In interpreting a statute, the Court must evaluate the statute in its entirety, thereby placing "its terms in context" in order to "interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal." *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012) (citations and internal quotation marks omitted). Here, the operative language of Code § 8.01-581.010 is prefaced by the statement "[u]pon *application* of a *party*." (Emphasis added.) Thus, in the context of Code § 8.01-581.010, the term "applicant" is synonymous with the term "party."

As service of "any process, order or other legal papers" to a party's attorney is imputed to the party, Code § 8.01-314, and an applicant is synonymous with party in the context of a motion to vacate under Code § 8.01-581.010, then the 90-day time period to file a motion to vacate the arbitration award in the present case began when Griffith received the award. Here, the record clearly demonstrates that a copy of the arbitration award was delivered to Griffith on October 4, 2017. Accordingly, Touma had until January 2, 2018 to file his motion to vacate. As Touma did not file his motion to vacate until January 18, 2018, the circuit court erred in finding that the motion to vacate the arbitration award was timely filed.

In the absence of a timely filed motion to vacate, the circuit court lacked a valid basis for vacating the arbitration award. Accordingly, the decision of the circuit court vacating the arbitration award is reversed and the matter is remanded for further proceedings consistent with this order.

This order shall be certified to the Circuit Court of Fairfax County.

A Copy,

Teste:

Clerk