

They further asserted the complaints contained no factual allegations of any wrongdoing by them in their individual capacities. The circuit court, in colloquy from the bench, noted that, “You’ve got to give some credence to the fact that they are named separately and that they are referred to collectively as defendants.” The circuit court ruled from the bench that the arbitrator’s awards should be upheld, and subsequently issued a short form order summarily denying the motion to vacate the awards.

On appeal, the Harts argue that the award of damages, both actual and punitive, against them should be vacated because they were not sued in their individual capacities. The Harts assert: “The arbitrator’s decision contains no specific findings of fact or conclusions of law. It is therefore impossible to actually pinpoint the basis for his conclusion that each of the individuals named as Defendants in this case [is] liable for . . . actual damages and . . . punitive damages. This decision is clearly beyond both the arbitrator’s authority and power, and made with manifest disregard for the law.”

“The character in which one is made a party to a suit must be determined from the allegations of the pleadings, and not from the title alone.”¹⁵ “Where the allegations of the complaint indicate with reasonable certainty that a plaintiff sues, or a defendant is sued, in a representative capacity, although not specifically stated, this is sufficient to fix the character of the suit.”¹⁶ “Where it is doubtful in what capacity a party sues or is sued, the entire complaint must be examined to determine the question, and reference may also be had to the pleadings as a whole or to the entire record.”¹⁷

“If the complaint is unclear on this issue [of whether a defendant is being sued in an official or representative capacity or whether the defendant

¹⁵ 67A C.J.S. Parties § 173, at 722 (2002).

¹⁶ Id.

¹⁷ Id. (footnotes omitted).

