

2006 NY Slip Op 1585, *; 27 A.D.3d 425, **;
810 N.Y.S.2d 661, ***; 2006 N.Y. App. Div. LEXIS 2620

[*1] Eduard Levin, respondent, v Roman Isayeu, et al., defendants, Sergey Sirik,
appellant.

2005-01021, (Index No. 41183/03)

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT

2006 NY Slip Op 1585; 27 A.D.3d 425; 810 N.Y.S.2d 661; 2006 N.Y. App. Div. LEXIS
2620

March 7, 2006, Decided

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UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL
REPORTS.

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Thomas Freedman, and Eric S. Crusius of counsel), for appellant.

Eric S. Finger, Mineola, N.Y. (Seth I. Fields of counsel), for respondent.

JUDGES: ROBERT W. SCHMIDT, J.P., FRED T. SANTUCCI, WILLIAM F. MASTRO,
ROBERT A. LIFSON, JJ. SCHMIDT, J.P., SANTUCCI, MASTRO and LIFSON, JJ., concur.

OPINION: [**425] [***661] DECISION & ORDER

In an action, inter alia, to recover damages for personal injuries, the defendant
Sergey Sirik appeals from an order of the Supreme Court, Kings County (Lewis, J.),
dated December 17, 2004, which denied his cross motion pursuant to [CPLR
3211\(a\)\(7\)](#) [***662] to dismiss the amended complaint insofar as asserted
against him.

ORDERED that the order is reversed, on the law, with costs, the cross motion is
granted, the amended complaint is dismissed insofar as asserted against the
defendant Sergey Sirik, and the action against the remaining defendants is severed.

In opposition to the cross motion of the defendant Sergey Sirik pursuant to [CPLR
3211\(a\)\(7\)](#) to dismiss the amended complaint insofar as asserted against him, the
plaintiff argued that the amended complaint set out causes of action against that
defendant based on a theory of piercing the corporate veil (*see generally* [Fiber
Consultants v Fiber Optek Interconnect Corp.](#), 15 AD3d 528, 792 N.Y.S.2d 89;
[Republic Nat'l Title Ins. Co. v Moskowitz](#), 297 A.D.2d 724, 747 N.Y.S.2d 556).
Though a corporate officer may be held liable upon such theory for the tortious
conduct of the corporation, here the amended complaint contains neither reference
to such a predicate nor to the "complete domination" ([Brito v DILP Corp.](#), 282 A.D.2d
320, 723 N.Y.S.2d 459) of the corporate defendants by Sirik necessary to sustain
personal liability against Sirik.

Accepting the facts as alleged in the amended complaint as true, and according the [*2] plaintiff the benefit of every possible favorable inference (see [Leon v Martinez](#), 84 N.Y.2d 83, 638 N.E.2d 511, 614 N.Y.S.2d 972), the amended complaint fails to state a cause of action against the defendant Sirik (see [CPLR 3211\[a\]\[7\]](#)). The plaintiff's allegations [**426] regarding Sirik's conduct were impermissibly vague and conclusory (see [Stoianoff v Gahona](#), 248 A.D.2d 525, 670 N.Y.S.2d 204, cert denied sub nom [Stoianoff v New York Times](#), 525 U.S. 953, 119 S. Ct. 384, 142 L. Ed. 2d 317).

We have not considered the argument advanced by the plaintiff for the first time on appeal that Sirik may be liable personally for his active participation in the alleged wrong (see e.g. [Rothstein v Equity Ventures](#), 299 A.D.2d 472, 750 N.Y.S.2d 625; [Widlitz v Scher](#), 148 A.D.2d 530, 540 N.Y.S.2d 179).

Therefore, the Supreme Court improperly denied Sirik's cross motion pursuant to [CPLR 3211\(a\)\(7\)](#) to dismiss the amended complaint insofar as asserted against him.

SCHMIDT, J.P., SANTUCCI, MASTRO and LIFSON, JJ., concur.