

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

M89916  
E/sl

STEVEN W. FISHER, J.P.  
MARK C. DILLON  
THOMAS A. DICKERSON  
ARIEL E. BELEN, JJ.

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2006-09818

DECISION & ORDER ON MOTION

Wanderlei Gasques, et al., appellants,  
v State of New York, respondent.

(Claim No. 108518)

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Motion by appellants for leave to reargue an appeal from an order of the Court of Claims, dated September 6, 2006, which was determined by decision and order of this court dated February 24, 2009, or, in the alternative, for leave to appeal to the Court of Appeals pursuant to CPLR 5602(b)(1) from the decision and order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is


ORDERED that the branch of the motion which is for leave to reargue is denied; and it is further,

ORDERED that the branch of the motion which is for leave to appeal to the Court of Appeals is granted, and the following question is certified to the Court of Appeals: Was the decision and order of this court dated February 24, 2009, properly made?

Questions of law have arisen, which, in our opinion, ought to be reviewed by the Court of Appeals (*see* CPLR 5713).

FISHER, J.P., DILLON, DICKERSON and BELEN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court

July 23, 2009

GASQUES v STATE OF NEW YORK