

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 07-01936

PRESENT: MARTOCHE, J.P., FAHEY, GREEN, PINE, AND GORSKI, JJ.

LEROY SIMMONS, JR., CLAIMANT-RESPONDENT,

V

ORDER

STATE OF NEW YORK, DEFENDANT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (ZAINAB A. CHAUDHRY OF COUNSEL), FOR DEFENDANT-APPELLANT.

CROUCHER, JONES AND JOHNS, CANANDAIGUA (DAVID A. JOHNS OF COUNSEL), FOR CLAIMANT-RESPONDENT.

Appeal from an order of the Court of Claims (Philip J. Patti, J.), entered August 20, 2007. The order denied the pre-answer motion of defendant to dismiss the claim and granted the cross motion of claimant for leave to amend the claim.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at the Court of Claims (*Simmons v State of New York*, 17 Misc 3d 394).

Entered: February 6, 2009

JoAnn M. Wahl
Clerk of the Court