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This memorandum is uncorrected and subject to revision before publication in the New York Reports.

USCOA,2 No. 160

David Policano,

Respondent,

v.

Victor T. Herbert,

Appellant.

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Certification of questions by the United States Court of Appeals for the Second Circuit, pursuant to section 500.27 of this Court's Rules of Practice, accepted and the issues presented are to be considered after briefing and argument. Chief Judge Kaye and Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo, Read and R.S. Smith concur.

Decided July 6, 2006