

**Stajano v United Tech. Corp. of N.Y. City**

2004 NY Slip Op 30322(U)

March 2, 2004

Sup Ct, NY County

Docket Number: 003052/1980

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: SHIRLEY WERNER KORNREICH  
*Justice* J.S.C.

PART 54

0003052/1980

STAJANO, JULIO  
VS  
UNITED TECHNOLOGY

INDEX NO. 3052/80

MOTION DATE 12/18/03

MOTION SER. NO. 42

MOTION CAL. NO. \_\_\_\_\_

SEQ 42

REARGUMENT/RECONSIDERATION

The following papers, numbered 1 to 3 were read on this motion to/for renewal reargument  
reconsideration

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...	<u>1</u>
Answering Affidavits – Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance  
with the annexed Decision and Order.

MOTION COVER IS RESPECTFULLY REFERRED TO JUSTICE

FILED  
MAR 12 2004

Dated: 3/2/04

SHIRLEY WERNER KORNREICH  
*J.S.C. J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: LAS PART 28

JULIO CESAR WILSON STAJANO and ANA  
MARIA DELGATTE de STAJANO, as parents and  
natural Guardians of infant Plaintiff CHANTAL  
DELGATTE STAJANO, and JULIO CESAR  
WILSON STAJANO and ANA MARIA DELGATTE  
de STAJANO, individually,

Plaintiffs,

Index No. 003052/1980

-against-

**DECISION and ORDER**

UNITED TECHNOLOGY CORPORATION OF  
NEW YORK CITY and UNITED TECHNOLOGIES  
COWORATION and SIKORSKY AIRCRAFT, INC.,  
Defendants.

x

**SHIRLEY WERNER KORNREICH, J.:**

The within motion by plaintiffs' counsel – to reargue and/or renew defendants' prior motion for summary judgment, and to vacate this Court's Order dated October 8, 2002, dismissing the complaint -- is based upon confidential testimony adduced at a hearing before the Departmental Disciplinary Committee for the First Judicial Department, which was investigating plaintiffs' counsel's reported prejudicial misbehavior during proceedings in the above-captioned case (hereinafter \_\_\_\_\_ & Judiciary Law §90(10). At that hearing, on July 11, 2003, Justice Martin Schoenfeld, to whom Staiano had previously been assigned, expressed personal reservations about the temperament of the Referee who had been appointed to oversee discovery in Staiano. The Referee had been appointed in the first instance because plaintiffs' counsel's obstructive tactics had brought discovery in Staiano to a virtual standstill. The Referee's 10-page report, issued to the Court on August 22, 2001, with a copy to the Disciplinary Committee, detailed counsel's disruptive conduct during, e.g., depositions and medical examinations of plaintiffs' witnesses, and questioned counsel's "fitness to practice law." At plaintiffs' counsel's

Disciplinary Hearing, Justice Schoenfeld further testified that he had not asked for a report from the Referee, that he had never seen the Referee's report, and that he had not authorized its dispatch to the Disciplinary Committee.'

This Court alluded to the Referee's report in footnote 6 of its 24-page Decision, and again, in passing, on page 7, in the context of its discussion of the dearth of evidence supporting the Staiano plaintiffs' theory that a helicopter accident that had occurred in Uruguay on November 14, 1971 had been caused by a design defect in the subject aircraft, which had been constructed by Sikorsky Aircraft in the 1950's in accordance with U.S. Navy specifications. The Decision itself was otherwise devoted to an in-depth discussion of the facts, the pertinent expert testimony on the aircraft's engineering, and the law governing motions for summary judgment.

Plaintiffs's counsel now moves to reargue and/or renew defendants' prior motion for summary judgment, and to vacate this Court's Order dated October 8, 2002, on the ground that because of Justice Schoenfeld testimony regarding the Referee at his disciplinary hearing, the Referee's entire report was "unauthorized, unconfirmed, and unacceptable 'ultra vires' material." Accusing this Court of unexplained bias, counsel goes on to charge that the Court "obviously substantially relied" upon the Referee's unauthorized, etc. report in order to arrive at its "defective and unusual result" – dismissal of the Complaint.

Plaintiffs' application insofar as it seeks reargument is denied. Plaintiffs have not identified any matters of fact or law allegedly overlooked or misapprehended by the Court in its

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'Significantly, after reading the Referee's report for the first time at the Disciplinary Hearing, Justice Schoenfeld expressly refused to condone plaintiffs' counsel's conduct, did not fault the Referee for sending his report to the Commission, and testified that he had repeatedly warned plaintiffs' counsel to reserve all objections except as to form to the trial of the action. See Hearing Testimony, plaintiffs' Exhibit 2, at pp. 741-744.

\* 4]

determination of the prior motion, beyond characterizing the result as “defective and unusual.” See CPLR §2221(d)(2). In addition, the application is clearly untimely, in that it was filed on or around September 19, 2003, nearly a year after the Court issued its Decision, Order and Judgment. See CPLR 2221(d)(3).

Renewal is likewise denied. The “new facts” offered here – Justice Schoenfeld’s testimony at the Disciplinary Committee Hearing regarding, inter alia, the Referee’s lack of fortitude when confronted with obstreperous counsel’ – would not have changed the Court’s prior determination of defendants’ motion for summary judgment. The Court’s sole allusions to the Referee’s report were in passing, and were unrelated to the central issues in the case.

Finally, to the extent that plaintiffs seek to vacate this Court’s prior judgment under CPLR 5015(a)(2), the motion must similarly be denied because plaintiffs’ “newly-discovered evidence” would most certainly not “have produced a different result” had it been presented on the original motion. See CPLR 5015(a)(2). It is well established that where the “new evidence” does not refute an essential finding underlying the judgment, then such new facts would not “probably have produced a different result.” See Boneiasca v. Boneiasca, 289 A.D.2d 121 (1<sup>st</sup> Dept. 2001); Esoinet v. Solis, 281 A.D.2d 343 (1<sup>st</sup> Dept. 2001). Accordingly it is

ORDERED that plaintiffs’ motion is denied in all respects.

The foregoing constitutes the Decision and Order of the Court.

Dated: March 2, 2004  
New York, New York

**FILED**  
MAR 12 2004  
NEW YORK  
SHIRLEY WARNER KORNBLITH  
CLERK'S OFFICE

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<sup>2</sup>It is noteworthy that Justice Schoenfeld did not disagree with the Referee’s opinion of counsel’s behavior, notwithstanding his reservations regarding the Referee’s purported excitability under stress.