

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

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Re: ***Delaware Department of Transportation v. Mactec Engineering and Consulting, Inc. and Figg Bridge Engineers, Inc.***
C.A. No. S11C-01-031 RFS

*Upon Defendant Mactec's Motion to Amend Caption.
Granted.*

Submitted: August 19, 2011
Decided: December 14, 2011

Dear Counsel:

The defendant, Mactec Engineering and Consulting, Inc. is a Delaware

Corporation and is being sued with another Defendant, Figg Bridge Engineers, Inc., for problems occurring in bridge and road construction at the Indian River Inlet. The background of the case is set forth in the Court's Memorandum Opinion decided on November 9, 2011 and Letter Order denying Mactec's Motion for Reconsideration and Reargument dated December 7, 2011.

Mactec seeks to amend the case caption to reflect a name change under Civil Rules 10 and 15(a). The Plaintiff, State of Delaware Department of Transportation, opposes the motion.

During 2011, Mactec was an engineering and environmental company. It had over 2600 employees and 70 offices. Mactec was headquartered in Alpharetta, Georgia, and it performed infrastructure work in the eastern part of the United States. AMEC is an international engineering and project management company which trades on the London stock exchange. It is not a party to this litigation. AMEC purchased Mactec in 2011 reportedly for 280 million dollars. During the transaction, Mactec changed its name to AMEC E & I, Inc.

Following consideration, this Court grants Mactec's motion for the following reasons:

- 1) A change of name does not alter the identity of a corporation, and it does not affect its liability. 18A Am Jur.2d Corporations § 240. "A change of name by a corporation has no more effect upon the identity of a corporation than a change of name

by a natural person has upon the identity of such person.” 6 Fletcher Cyc Corp. § 2465. Amendments to captions of cases to reflect name changes are not unusual. *See e.g., Kroetz v. AFT. Davidson Co.*, 102 F.R.D 934, 936-38 (E.D. N.Y. 1984) (amending caption of complaint to reflect defendant’s correct name); *In re: Agent Orange Product Liability Litigation*, 91 F.R.D. 618, 619 (E.D. N.Y. 1981) (granting defendant’s motion to amend caption to reflect defendant’s new corporate name); *Wright & Miller*, Federal Practice and Procedure § 1474 at 612.

Furthermore, “The identity of a corporation that has changed its name must be proven by sufficient evidence. The evidence should also disclose that the corporation complied with the statutory requirements governing a change of corporate name.” *Fletcher, supra.* at § 4591. The best evidence would be shown by a certified copy of the Secretary of State’s certificate reflecting the corporate action, *see Patrick v. Corbett*, 67 S.W.2d 756, 759 (Mo. App. 1934), *Whitman v. National Bank of Oxford*, 83 F. 288, 296 (2d.Cir. 1897), *aff’d.*, 176 U.S. 559 (1900). However, an amendment does not have the effect of substituting another party. 59 Am Jur.2d Parties § 413.

2) Mactec has filed a certification by the Delaware Secretary of State. The Secretary certifies the attachment of: A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF “MACTEC ENGINEERING AND CONSULTING, INC.,” CHANGING ITS NAME FROM “MACTEC ENGINEERING AND CONSULTING, INC.” TO “AMEC E & I, Inc.” It was filed on June, 22, 2011,

with an effective date of July 5, 2011. Under 8 *Del.C.* § 105, the Superior Court will judicially treat the contents of the amended certificate as *prima facie* evidence of the “due execution, acknowledgment and filing of the instrument, observance and performance of all acts and conditions necessary to have been observed and performed precedent to the instrument becoming effective and any other facts required or permitted by law to be stated in the instrument.”

A change of corporate name is the subject of amendment. 8 *Del.C.* § 242(a)(1). The required procedure to amend a certificate requires a board of directors’ resolution with stockholders’ approval. 8 *Del.C.* § 242(b)(1). Thereafter, the corporation can certify the adoption of the amendment which must be executed, acknowledged and filed in the Office of the Secretary of State. 8 *Del.C.* § 103. An authorized officer must sign it. The signature constitutes an acknowledgment that the instrument is the deed of the corporation and “that the facts stated therein are true.” 8 *Del.C.* § 103(a)(2), (b)(2).

3) Upon review, the amended certificate as certified satisfies the foregoing requirements. Therefore, the caption shall be amended to reflect the change.

4) While the State did not find fault with the statutory procedure, it expressed concern whether AMEC has potential successors’ liability or if Mactec is a mere shell. Before the transaction, Mactec’s annual revenues were reported to be more than 411 million dollars, and AMEC’s income was reported to be in the 5 billion dollar range. The environmental and infrastructure work appears to be within the bailiwick of AMEC E &

I, Inc., which like Mactec, is based in Alpharetta, Georgia.

5) The issue whether AMEC may have successor liability is not before this Court. Nor is the question of a fraudulent conveyance. The amendment of the caption does not make AMEC a separate party defendant. It does not affect the identity or responsibility of the corporation which changed its name to the State. A merger or consolidation would not abate a pending action. 8 *Del.C.* § 261.

6) Defendant requests its attorney's fees and costs, asserting the State's objection to a routine change of caption motion was frivolous. However, the State was willing to stipulate to the amendment if the pertinent part of the authorizing resolution was shared. Defendant declined. There did not appear to be problems involving privilege or confidentiality. With cooperation, this dispute could easily have been avoided without expending judicial resources. The demands of the criminal and civil dockets are heavy, and time must be reserved for issues which cannot be resolved beforehand. In this context, sanctions will not be imposed.

In conclusion, the caption and all pleadings shall reflect the Defendant to be AMEC E & I, Inc., f/k/a MACTEC ENGINEERING AND CONSULTING, INC.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary
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James F. Lee, Jr., Esquire
Michael F. German, Esquire