FILMINERA RESOURCES CORPORATION, REPRESENTED BY ITS RESIDENT MANAGER, DANILO S. LATUGA, PETITIONER-APPELLANT, VS. THE REGISTER OF DEEDS, PROVINCE OF MASBATE, RESPONDENT-APPELLEE.

Ponente: TIJAM, J.

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TIJAM, J.:

Before Us is an Appeal[1] assailing the Orders dated November 9, 2011[2] and January 3, 2012[3] rendered by the Regional Trial Court of Masbate City, Branch 45 (RTC) in Spec. Proc. No. 334-2010.

The facts are as follows:

On November 22, 2010, Petitioner-Appellant filed a Petition for the Transfer of Transfer Certificate of Title Nos. T-16644, T-16645, T-16646, T-16651, T-16652, T-16653, T-16654, T-16757, T-16758, T-16759, and T-16760[4], all located in Masbate and in the name of Base Metals Mineral Resources Corporation, in favor of Filminera Resources Corporation.

It alleged that its former registered name is Base Metals Mineral Resources Corporation ("Base Metals"), and that after its incorporation in 1989, it acquired several real estate properties, and was issued the certificates of title subject of the petition.

Sometime in February 1999, the incorporators of Base Metals caused the amendment of their Articles of Incorporation and By-Laws to amend, among others, its corporate name from Base Metals to Filminera Resources Corporation. Thus, the transfer of the certificates of title to the name of Filminera Resources Corporation was necessary.

Petitioner-Appellant presented, among others, copies of the subject certificates of title, tax declarations, and amended articles of incorporation and by-laws. It presented the testimony of its lone witness, Jaime Salazar, to attest to the change in corporate name of Base Metals to Filminera Resources Corporation.

The Respondent-Appellee did not present any controverting evidence and all of Petitioner-Appellant's exhibits were admitted.

In the assailed Order dated November 9, 2011, the RTC denied Petitioner-Appellant's Petition in this wise:

> "Firstly, it appears from the record that Filminera Resources Corporation is a juridical entity separate and distinct from Basemetal (sic) Mineral Resources Corporation. There is nothing in the evidence submitted to the Court that Basemetal (sic) Mineral Resources Corporation through its directors has amended its name to Filminera Resources Corporation. xxx
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> Secondly, if indeed, the petitioner is formerly the Basemetal (sic) Mineral Resources Corporation doing business under the name and style of Filminera Resources Corporation under a regularly and validly amended Articles of Incorporation, the remedy of the petitioner to effect the transfer to its name of the Certificates of

> Title of the above-described properties is to present said duly amended Articles of Incorporation before the Registry of Deeds and to request that said Certificates of Title be transferred to its name.
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> WHEREFORE, in view of the foregoing, for lack of merit, the petition to transfer the Certificates of Title Nos. T-16644, T-16645, T-16646, T-16651, T-16652, T-16653, T-16654, T-16757, T-16758, T-16759, and T-16760 from Basemetal (sic) Mineral Resources Corporation to Filminera Resources Corporation is denied."[5]

Petitioner-Appellant filed a Motion for Reconsideration on December 9, 2011[6], which was denied by the RTC in the assailed Order dated January 3, 2012.

Hence, this Appeal.

The issues raised by Petitioner-Appellant are as follows:

> "I. Whether or not Filminera Resources Corporation is a juridical entity separate and distinct from Base Metals Mineral Resources Corporation; and
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> II. Whether or not the remedy of Filminera Resources Corporation is to present the duly amended Articles of Incorporation before the Registry of Deeds and request that the Certificates of Title under the name Base Metals Mineral Resources Corporation be transferred to its name."[7]

Petitioner-Appellant insists that contrary to the findings of the RTC, there was no second entity created and Base Metals simply changed its name to Filminera Resources Corporation. It also insists that the RTC erred in holding that the remedy is to present the amended articles of incorporation before the registry of deeds and request the transfer. It prays for the reversal of the assailed orders and a new one be issued to effect the amendment of the certificates of title to change the owner's name from Base Metals Mineral Resources Corporation to Filminera Resources Corporation.

The Office of the Solicitor General ("OSG") filed a Manifestation[8] in lieu of an appellee's brief. It points out that Petitioner-Appellant's petition before the RTC sought the transfer, not amendment of the transfer certificates of title, and that it was only on appeal that Petitioner-Appellant corrected itself by praying for the amendment of the subject transfer certificates of title. Nonetheless, the OSG urges Us to grant the appeal in the interest of substantial justice. The OSG manifests that though a party may not change its theory on appeal, a relaxation of the rules is in order in this case. It notes that though Petitioner-Appellant did not pray for the amendment, the allegations, the evidence presented, and facts proved all support the amendment in compliance with Section 108 of P.D. 1529.

The appeal has merit.

A perusal of the records reveal that Base Metals merely changed its corporate name to Filminera Resources Corporation, thus, it was incorrect for the RTC to hold that there were two separate and distinct entities. The case of Zuellig Freight and Cargo Systems vs. NLRC[9] is instructive on the effect of changing of corporate names:

> "Verily, the amendments of the articles of incorporation of Zeta to change the corporate name to Zuellig Freight and Cargo Systems, Inc. did not produce the dissolution of the former as a corporation. For sure, the Corporation Code defined and delineated the different modes of dissolving a corporation, and amendment of the articles of incorporation was not one of such modes. The effect of the change of name was not a change of the corporate being, for, as well stated in Philippine First Insurance Co., Inc. v. Hartigan: "The changing of the name of a corporation is no more the creation of a corporation than the changing of the name of a natural person is begetting of a natural person. The act, in both cases, would seem to be what the language which we use to designate it imports — a change of name, and not a change of being."
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> The consequences, legal and otherwise, of the change of name were similarly dealt with in P.C. Javier & Sons,

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> Inc. v. Court of Appeals, with the Court holding thusly:
> From the foregoing documents, it cannot be denied that petitioner corporation was aware of First Summa Savings and Mortgage Bank's change of corporate name to PAIC Savings and Mortgage Bank, Inc. Knowing fully well of such change, petitioner corporation has no valid reason not to pay because the IGLF loans were applied with and obtained from First Summa Savings and Mortgage Bank. First Summa Savings and Mortgage Bank and PAIC Savings and Mortgage Bank, Inc., are one and the same bank to which petitioner corporation is indebted. A change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights, or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed."(Emphasis Ours)

In support of its claim that there was a change of name, Petitioner-Appellant submitted its amended articles of incorporation[10] which clearly states that it was formerly Base Metals. The attached Director's Certificate[11] likewise attests to the amendment effecting the change of name of Base Metals to Filminera Resources Corporation. This was also the subject of the testimony of Petitioner-Appellant's witness Jaime Salazar.[12] There was, therefore, more than sufficient evidence to support the allegation of a change of corporate name.

Section 108 of P.D. 1529 prescribes the amendment and alteration of certificates:

> "Section 108. Amendment and alteration of certificates. No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.
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> All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered." (Emphasis Ours)

Clearly from the said provision, a change in the name of the registered owner, one will have to file a petition with the RTC to effect such change on a certificate of title. The RTC then was incorrect in stating that Petitioner-Appellant just has to show the amended articles of incorporation to the Register of Deeds.

As pointed out by the OSG, the petition filed with the RTC was referred to as a transfer rather than as an amendment:

> "It must be observed that appellant's Petition sought for the transfer, not amendment, of the Transfer Certificates of Title. Even its Petition is captioned as Petition for Transfer. It is only for the first time on appeal that appellant corrected itself by praying for the amendment of the subject Transfer Certificates of Title.
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> There appears to be a misnomer by appellant in electing its remedy. There is a big difference between transfer and amendment under the law. Transfer connotes the idea that there are two or more parties involved while an amendment basically involves one and the same person.
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> Precisely, the subject Transfer Certificates of Title cannot be transferred but the same may be amended. Appellant should have filed a Petition for amendment rather than a Petition for transfer."[13]

The Petitioner-Appellant was consistent in referring to their petition as one of transfer before the proceedings in the RTC. It also invoked the law with regard to amendment of certificates (Sec. 108 of P.D. No. 1529) only on appeal. It can be gleaned, however, that while it did not specifically pray for an amendment of the certificates, it is clear from the pleadings, testimony and evidence submitted that the amendment of the certificates is in order.

According to the case of Philippine National Bank vs. Spouses Manalo[14]:

> "The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude an adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings, or serve as a basis for a higher award of damages. Although the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the basis of issues discussed and the assertions of fact proved in the course of trial. The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually so amended.
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> xxx
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> Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, so long as the basic requirements of fair play had been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it." (Emphasis Ours)

Petitioner-Appellant may appear to have changed its theory on appeal, but in the higher interest of justice, We allow and admit the same. As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage.[15]

However, the evil sought to be avoided with regard to change in theory on appeal, that is to cause prejudice against the adverse party, is not present in this case. No new evidence was presented on appeal, and as discussed above, the evidence presented before the RTC all support the amendment of the certificates. Furthermore, the OSG itself advocates the granting of the appeal:

> "Although under the Rules, a party may not change its theory on appeal, the records of the case are extant with evidence that indeed appellant merely had a change of name. This warrants the relaxation of the Rules as there is no further question of fact that needs to be resolved. Moreover, no rights of third persons are affected and the title to subject properties may now be finally settled."[16]

Considering the change of corporate name of Base Metals Mineral Resources Corporation to Filminera Resources Corporation, which was supported by both testimonial and documentary evidence, the grant of the amendment of

the subject certificates of title is in order.

WHEREFORE, the Appeal is hereby GRANTED. The Orders dated November 9, 2011[17] and January 3, 2012[18] rendered by the Regional Trial Court of Masbate City, Branch 45 (RTC) in Spec. Proc. No. 334-2010 are hereby REVERSED AND SET ASIDE.

The Register of Deeds of Masbate is hereby DIRECTED to issue amended certificates of title for Transfer Certificate of Title Nos. T-16644, T-16645, T-16646, T-16651, T-16652, T-16653, T-16654, T-16757, T-16758, T-16759, and T-16760 in the name of Filminera Resources Corporation.

SO ORDERED.

Lopez, M.V., and Garcia-Fernandez, M.V., JJ., concur.

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[1] Rollo, pp. 18-33.

[2] Rollo, pp. 35-37.

[3] Rollo, pp. 38-39.

[4] Original Records, pp. 1-3.

[5] Rollo, pp. 36-37.

[6] Original Records, pp. 91-92.

[7] Rollo, p. 23.

[8] Rollo, pp. 47-57.

[9] G.R. No. 157900, July 22, 2013.

[10] Original Records, pp. 36-43.

[11] Original Records, pp. 45-47.

[12] Original Records, pp. 80-81.

[13] Rollo, p. 55.

[14] G.R. No. 174433, February 24, 2014.

[15] BPI vs. Leobrera, et. al., G.R. Nos. 137147-8, November 18, 2003.

[16] Rollo, p. 55.

[17] Rollo, pp. 35-37.

[18] Rollo, pp. 38-39.

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