

Republic of the Philippines
Department of Justice
National Prosecution Service
OFFICE OF THE CITY PROSECUTOR
Makati City

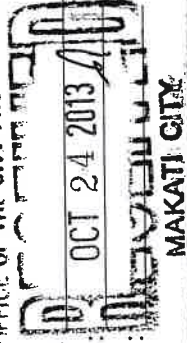
INVESTIGATION DATA FORM

To be accomplished by the Office

DATE RECEIVED:

(stamped and initialed):
Time Received _____
Receiving Staff _____

OFFICE OF THE CITY PROSECUTOR
NPS DOCKET NO.: [REDACTED]



Assigned to: _____
Date Assigned: _____

*To be accomplished by complainant/counsel/law enforcer
(Use back portion if space is not sufficient)*

COMPLAINANT/S: Name, Sex, Age & Address _____
RESPONDENT/S: Name, Sex, Age & Address _____

[REDACTED]
Cagayan Economic Zone Authority (CEZA)
Complex, Sta. Ana, Cagayan

[REDACTED]
IAN ROBERT GUSTAFSSON (Makati City),
SYLVIA BERNADETTE GONZALES DE
GUZMAN (Quezon City) and SHERWIN
QUIAMBAO (Makati City)

LAW/S VIOLATED:

Qualified Theft under Article 310 of the Revised
Penal Code

WITNESS/ES: Name & Address

[REDACTED]
25th Floor, Yuchengco Tower 1, RCBC Plaza,
6819 Ayala Avenue, Makati City

DATE & TIME OF COMMISSION:

April 2012

PLACE OF COMMISSION:

Makati City

1. Has a similar complaint been filed before any other office? * YES ___ NO
2. Is this complaint in the nature of counter-affidavit? * YES ___ NO If yes, indicate details below.
3. Is this complaint related to another case before this office? * YES ___ NO If yes, indicate details below.

I.S. No.: _____

Handling Prosecutor: _____

CERTIFICATION *

I CERTIFY, under oath, that all the information on this sheet are true and correct to the best of my knowledge and belief, that I have not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasijudicial agency, and that if I should thereafter learn that a similar action has been filed and/or is pending, I shall report that fact to this Honorable Office, within five (5) days from knowledge thereof.

SUBSCRIBED AND SWORN TO before me this _____

day of _____, 20__ in

(Signature over printed name)

24 OCT 2013



Prosecutor Administering Oath

*1, 2, 3 and Certification need not be accomplished for inquest cases

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
Office of the City Prosecutor
MAKATI CITY



Complainant,

- versus -


NPS Docket No. _____
For: Qualified Theft under Article 310
of the Revised Penal Code

JAN ROBERT GUSTAFSSON,
SYLVIA BERNADETTE
GONZALES DE GUZMAN
and **SHERWIN**
QUIAMBAO,

Respondents.

x-----x

COMPLAINT-AFFIDAVIT

I,  of legal age, Filipino, and with postal address at the 25th Floor, Yuchengco Tower 1, RCBC Plaza, 6819 Ayala Avenue, Makati City, respectfully complain against Jan Robert Gustafsson, Sylvia Bernadette Gonzales de Guzman and Sherwin Quiambao for Qualified Theft under Article 310 of the Revised Penal Code, and after having been duly sworn to in accordance with law, respectfully state:

1. Complainant is a corporation duly organized and validly existing under Philippine laws, with principal office at Cagayan Economic Zone Authority (CEZA) Complex, Sta. Ana, Cagayan.¹
2. I am a Vice President for Global Internal Audit (Asset Management Group) which conducted a forensic audit on complainant. I was duly authorized by complainant's Board of Directors to institute the instant criminal complaint and to represent complainant herein.²

¹ A copy of complainant's Amended Articles of Incorporation is hereto attached and made integral part hereof as Annex "A."

² A copy of the *Secretary's Certificate* dated 23 October 2013 is hereto attached and made integral

3. Respondents are all of legal age. The other pertinent details of respondents are as follows:

NAME	NATIONALITY	LAST KNOWN ADDRESS
Jan Robert Gustafsson	Swedish	25A Amorsolo East Tower, Rockwell Center, Makati City
Sylvia Bernadette Gonzales de Guzman	American and Spanish	2 Embassy Gardenhomes, T. Benitez Street, West Triangle, Quezon City
Sherwin Quiambao	Filipino and Canadian	Unit 3906N Joya Lofts & Tower, Rockwell Center, Makati City

4. Respondents may be served with *subpoena* and other processes of this Honorable Office at their foregoing addresses.

5. As Vice President for Global Internal Audit (Asset Management Group) and in the course of a forensic audit on complainant, I reviewed all the pertinent records of certain suspicious and irregular transactions, including the transaction complained of herein, as well as conducted interviews.

6. Based on records, on 12 April 2012, respondent Jan Robert Gustafsson ("Robert"), complainant's former Managing Director, informed respondent Sherwin Quiambao ("Sherwin"), complainant's former Finance Manager, about a supposed payment to "Sel" "mid day tomorrow."³

7. The next day, 13 April 2012, respondent Sherwin instructed Lanie Bendo ("Lanie"), complainant's Chief Accountant, to prepare the supposed payment.⁴ As was customary for respondent

part hereof as Annex "B."

3 A printout of an email dated 12 April 2012 from Jan Robert Gustafsson is hereto attached and made integral part hereof as Annex "C."

4 A printout of an email dated 13 April 2012 from Sherwin Quiambao is hereto attached and made integral part hereof as Annex "D."

Sherwin, he merely sent a blank email to Lanie to remind her about his previous oral instructions regarding "Sel."

8. Lanie instructed her subordinates to prepare a wire transfer or telegraphic transfer for a certain transaction amounting to US\$160,338.00 in favor of Jose Luis J. Yulo.⁵ Upon further inquiry, the audit team found out that "Sel" is the nickname of an actual person named Jose Luis J. Yulo.

9. A voucher for US\$160,338.00 in favor of "Jose Luis Yulo" for "Legal Fee" was prepared.⁶

10. That same day, 13 April 2012, at about 10:50 a.m., respondents Sherwin and Sylvia Bernadette Gonzales de Guzman ("Sylvia"), who at that time were complainant's authorized signatories, signed, executed and delivered a BDO Foreign/Domestic Telegraphic Application Form for the telegraphic transfer of the amount of US\$160,338.00. The amount was withdrawn from complainant's BDO Account No. 3560117636 and was credited to HSBC Savings Bank Account No. 081036881130 in the name of Jose Luis Yulo.⁷

11. Complainant's BDO Account No. 3560117636 was maintained with BDO Pacific Star Branch, Makati City, where the BDO Foreign/Domestic Telegraphic Application Form was likewise submitted and processed.

12. After its review, the audit team found that:

- i) there was no contract or proof of any transaction which bound or required complainant to pay said amount to Jose Luis J. Yulo or "Sel";
- ii) complainant's Board of Directors never approved or authorized the engagement of the services of, or payment to, Jose Luis J. Yulo or "Sel";

⁵ A printout of an email dated 13 April 2012 from Lanie Bendo is hereto attached and made integral part hereof as Annex "E."

⁶ A copy of a voucher dated 13 April 2012 is hereto attached and made integral part hereof as Annex "F."

⁷ A copy of the BDO Foreign/Domestic Telegraphic Application Form dated 13 April 2012 is hereto attached and made integral part hereof as Annex "G."

- iii) no detailed business case of the supposed transaction was presented to, or approved by, the Executive Committee, in gross violation of the prevailing company policy;
- iv) there was no proof that Jose Luis J. Yulo or "Sel" actually rendered any service to complainant;
- v) Jose Luis J. Yulo or "Sel" is not a member of the Philippine Bar; and
- vi) the liability to Jose Luis J. Yulo or "Sel," if any, was not a corporate liability but a personal liability of respondents.

13. I was advised by my counsel that respondents are guilty of Qualified Theft under Article 310 in relation to Articles 308 and 309 of the Revised Penal Code.

14. Article 308 of the Revised Penal Code provides:

Art. 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

15. Article 309 of the Revised Penal Code provides:

Art. 309. Penalties. — Any person guilty of theft shall be punished by:

1. The penalty of *prison mayor* in its minimum and medium periods, if the value of the thing stolen is more than

12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph and one year of each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2. The penalty of *prision correccional* in its medium and maximum periods, if the value of the property stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* in its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed five pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

16. Article 310 of the Revised Penal Code provides:

Art. 310. Qualified theft. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

17. All of the essential elements of the offense of Theft under Article 308 of the Revised Penal Code were present in the instant case, to wit:

- i) there was taking of personal property – the amount of US\$160,338.00 was withdrawn from complainant's bank account in Makati City, within the territorial jurisdiction of this Honorable Office, to pay a personal liability;
- ii) the property belonged to another – the funds withdrawn belonged complainant, not respondents;
- iii) the taking was done with intent to gain – which is presumed from the unlawful taking of personal property belonging to another, and, in fact, the money has not been returned to complainant;
- iv) the taking was done without the consent of the owner – the money was withdrawn without the requisite corporate approval, authority or instruction, and in the absence of any legitimate purpose; and
- v) the taking was accomplished without the use of violence against or intimidation of persons or force upon things.⁸

18. The theft herein was qualified under Article 310 of the Revised Penal Code by the circumstance that it was committed with grave abuse of confidence. Respondents, who formerly occupied high-ranking positions and acted as authorized signatories of complainant, gravely abused the trust and confidence reposed in them, and violated their fiduciary duties when they colluded in causing and making the unauthorized, illegitimate and illegal withdrawal of corporate funds to pay a personal liability.

19. I am executing this *Complaint-Affidavit* to attest to the truth of the foregoing and to support complainant's criminal complaint against respondents for Qualified Theft under Article 310

⁸ Reyes, Luis B. The Revised Penal Code Criminal Law. 2012 Eighteenth Revised Edition. Book Two, p. 732; citing *U.S. vs. de Vera*, 43 Phil. 1000 and *People vs. Yusay*, 50 Phil. 598.

of the Revised Penal Code.

20. Complainant has not commenced any other action or proceeding involving the same criminal liability or issue in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency.

21. To the best of my knowledge, no other action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency.

22. If I should thereafter learn that a similar action or proceeding has been filed or is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency, I undertake to report such fact within five (5) days therefrom to this Honorable Office.



CERTIFICATION

24 OCT 2013 SUBSCRIBED AND SWORN TO before me this the affiant, and that I am satisfied that the foregoing *Complaint-Affidavit* was freely and voluntarily executed by him.


ASSISTANT CITY PROSECUTOR

ASSISTANT CITY PROSECUTOR