

Federal Court



Cour fédérale

**Date: 20221123**

**Docket: T-771-21**

**Citation: 2022 FC 1613**

**Ottawa, Ontario, November 23, 2022**

**PRESENT: The Hon Mr. Justice Henry S. Brown**

**BETWEEN:**

**UBS GROUP AG**

**Plaintiff**

**and**

**MOHAMAD HASSAN YONES, ABDULRHMAN ALAYA  
AND UNIFIED BUSINESS SOLUTIONS GROUP INC.**

**Defendants**

**AND BETWEEN:**

**NAMESILO TECHNOLOGIES CORP.  
AND NAMESILO, L.L.C.**

**NON-PARTY RESPONDENTS  
(RULE 431 MOTION ONLY)**

**ORDER**

**UPON MOTION** by the Plaintiff UBS Group AG for an Order:

1. Declaring that the Defendants, Mohamad Hassan Yones, Abdulrhman Alaya and Unified Business Solutions Group Inc. (“Unified”) have failed to perform acts as

- required by the Judgment of Justice McHaffie issued in this proceeding on February 3, 2022 and the Order and Reasons of Justice McHaffie dated April 6, 2022;
2. Directing that the Plaintiff, through and with the assistance of the domain name registrar NameSilo LLC (“NameSilo”), may perform acts which the Defendants have failed to perform as required by the Default Judgment, namely, to transfer the registration for the domain name <ubsgroup.ca> to UBS Group AG;
  3. Directing that NameSilo transfer the domain name <ubsgroup.ca> to UBS Group AG;
  4. Directing that the Defendant pay the costs incurred by the Plaintiff in carrying out the acts referred to in paragraphs 2 and 3 of this Order, including without limitation, the fees of the Plaintiff’s counsel Gowling WLG (Canada) LLP (“Gowling WLG”) and any and all fees and charges of NameSilo charged or levied in connection with carrying out the acts referred to in paragraphs 2 and 3 of this Order;
  5. That Unified, itself and by its employees, partners, agents, officers, and directors, be permanently restrained and enjoined from, directly or indirectly, selling, transferring, or otherwise disposing of the registration for the domain name <ubsgroup.ca> to any third party;
  6. In the alternative, requiring the Defendant Unified, and its directors, Mohamad Hassan Yones and Abdulrhman Alaya, to appear before a Judge to show cause why they ought not to be found in contempt of court for failure to comply with the Judgment of Justice McHaffie issued in this proceeding on February 3, 2022 and the Order and Reasons of Justice McHaffie dated April 6, 2022; and

7. Such further and other relief as this Honourable Court may deem just.

**AND UPON** reviewing the motion materials, and hearing submissions from counsel and from the Defendant Alaya on his own behalf, no one appearing for the corporate Defendant, having determined that the relief requested should be granted for the following reasons:

1. Having reviewed the uncontested affidavit evidence and exhibits filed, I find the facts fully justify the Order sought in paragraph 1 above because, without any lawful excuse or justification, no part of the Judgment of Justice McHaffie has been complied with by any of the impacted Defendants. I make this finding notwithstanding the Defendant Alaya's repeated assertion at the hearing, which has no basis in law, that the Judgment of this Court was unfair and unjust, that notwithstanding said Judgment he continues to own and may profit from and sell the domain name <ubsgroup.ca> despite the fact he and the other Defendants are specifically ordered and directed by Justice McHaffie in paragraph 4 of his Judgment to transfer the domain name <ubsgroup.ca> to the Plaintiff UBS Group AG. In this respect the Defendant Alaya said he has or has had multiple other domain names, that this one is worth \$15,000.00 to \$20,000.00 and that he is willing to negotiate its sale to the Plaintiff in good faith, this again notwithstanding he is under a final judgment requiring he and all Defendants to transfer the domain name to the Plaintiff;
2. The relief sought in paragraph 2 above is justified under Rule 431 and Rule 3 of the *Federal Courts Rules* (SOR/98-106) and may be exercised by a party as per *Société de transport de l'Outaouais c SUT, unite 591*, 2016 FC 1008 (Locke J.). Rule 431 provides:

431. Where a person does not comply with an order to perform an act, without prejudice to the powers of the Court to punish the person for contempt, on motion, the Court may order that

(a) the required act be performed by the person by whom the order was obtained or by another person appointed by the Court; and

(b) the non-complying person pay the costs incurred in the performance of the act, ascertained in such a manner as the Court may direct, and that a writ of execution be issued against the non-complying person for those costs.

[Emphasis added]

3. The relief sought in paragraph 3 above relates to and reinforces the relief sought in paragraph 4 above. It is not opposed by the non-party respondents to this motion who through counsel advised counsel for the Plaintiff they will transfer the domain name <ubsgroup.ca> to UBS Group AG if so Ordered, as reported to the Court by counsel for the Plaintiff;
4. The relief sought in paragraph 4 above is that provided for by Rule 431(b) and is relief to which the Plaintiff has established it is entitled;
5. The relief sought in paragraph 5 above is in my view proper and just in light of the Defendant Alaya's repeated assertion before this Court, without legal basis, that he still owns the domain name <ubsgroup.ca> and has admission at the hearing that he has listed this domain name for sale as his personal property, which in my view he has no right to do because any such sale would be direct defiance of the Judgment of Justice McHaffie;

6. And because the relief sought in paragraph 6 was requested as an alternative to the relief just discussed, it does not need to be considered further at this time but may of course arise at some later time;
7. The Plaintiff requests payment of its costs of this motion on an all inclusive lump sum basis in the amount of \$2,500.00. I see no reason why costs should not follow the cause and will so order. In my view the lump sum requested is reasonable. Moreover, given the Defendants' failure to comply with any part of the Judgment of Justice McHaffie, the continued assertion the domain name belongs to the Defendant Alaya and indeed is listed for sale in defiance of Justice McHaffie's Judgment, I am persuaded costs should be payable forthwith.

**THIS COURT DECLARES AND ORDERS that:**

1. The Defendants, Mohamad Hassan Yones, Abdulrhman Alaya and Unified Business Solutions Group Inc. have failed to perform acts as required by the Judgment of Justice McHaffie issued in this proceeding on February 3, 2022, namely that the Defendants have failed to:
  - a) Deliver up to UBS Group AG or destroy under oath all offending articles in its possession, custody, or power;
  - b) Transfer the registration for the domain name <ubsgroup.ca> to UBS Group AG;
  - c) Pay to UBS Group AG damages in the amount of \$12,000, plus interest;and

- d) Pay to UBS Group AG its costs of the Default Judgment proceedings in the amount of \$23,000, plus interest.
2. The Defendants, Mohamad Hassan Yones, Abdulrhman Alaya and Unified Business Solutions Group Inc. have failed to perform acts as required by the Order and Reasons of Justice McHaffie dated April 6, 2022, namely that the Defendants have failed to pay the plaintiff the cost of the Defendants' failed motion to set aside the Default Judgment in the sum of \$750.00;
3. The Plaintiff UBS Group AG, through and with the assistance of the domain name registrar NameSilo, may perform acts which the Defendants have failed to perform as required by the Judgment of Justice McHaffie dated February 3, 2022, namely, to transfer the registration for the domain name <ubsgroup.ca> to UBS Group AG;
4. NameSilo shall transfer the domain name <ubsgroup.ca> to UBS Group AG;
5. The Defendants shall pay the costs incurred by the Plaintiff in carrying out the acts referred to in paragraphs 3 and 4 of this Order, including without limitation, the fees of the Plaintiff's counsel Gowling WLG and any and all fees and charges of NameSilo charged or levied in connection with carrying out the acts referred to in paragraphs 3 and 4 of this Order; and
6. Unified, itself and by its employees, partners, agents, officers, and directors, are permanently restrained and enjoined from, directly or indirectly, selling, transferring, or otherwise disposing of the registration for the domain name <ubsgroup.ca> to any third party.

7. The Defendants shall pay the Plaintiff the all inclusive lump sum amount of \$2,500.00 as its costs of this motion forthwith.

“Henry S. Brown”

Judge