

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

TIDEWATER MARKETING GLOBAL
CONSULTANTS, INC.,

Plaintiff,

v.

CASE NO: 8:08-cv-2497-T-26TGW

FREEFUELCENTER.COM, TROY WARREN, and
TROY WARREN d/b/a FREEFUELCENTER.COM,

Defendants.

ORDER

Upon due consideration of the well-pleaded allegations of Plaintiff's complaint, which this Court must accept as true at this juncture of the proceedings, it is ordered and adjudged as follows:

1) Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction Due to Plaintiffs' Lack of Standing (Dkt. 18) is denied because, in the Court's view, the Stipulated Order for Preliminary Injunction and Appointment of Receiver entered in the state case does not strip Plaintiff of its right to bring suit against Defendants in this case to protect its interests.

2) Defendants' Motion to Dismiss for Failure to State a Claim (Dkt. 18) is likewise denied. Having filed an answer and defenses to Plaintiff's complaint, Defendants' motion to dismiss for failure to state a claim is a nullity because "by filing an answer, the defendants [have]

eschewed the option of asserting by motion that the complaint failed to state a claim for relief.”

Leonard v. Enterprise Rent A Car, 279 F.3d 967, 971 n.6 (11th Cir. 2002).

DONE AND ORDERED at Tampa, Florida, on March 9, 2009.

s/Richard A. Lazzara

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:

Counsel of Record