

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

GAMESTREAMER, INC.,

Plaintiff,

v.

CASE NO: 8:10-cv-1201-T-26EAJ

TIMOTHY M. ROBERTS, TERRANCE
F. TAYLOR, and PLATFORMZ, INC.,

Defendants.

ORDER

Before the Court is Defendants' Motion for Summary Judgment with attachments (Dkt. 56) and Plaintiff's Response and Declaration with attachments. (Dkts. 64 & 65).

After careful consideration of the submissions of the parties, the Court concludes that the motion should be denied.

Defendants seek summary judgment, or in the alternative a dismissal, of Plaintiff's complaint. As Plaintiff urges, Defendants have not yet filed an answer to the complaint, and as such, have not set forth any defenses to the Plaintiff's claims. Defendants base their motion on facts surrounding the usurious nature of a loan made by Mr. Westman, who was allegedly made the majority owner of Plaintiff Gamestreamer as a result of the usurious loans. This day Defendants filed a Notice of Voluntary Dismissal, dismissing their Third Party Complaint, which named Mr. Westman as a defendant, but not

Gamestreamer.¹ Thus, no claims are at issue at this time are capable of being resolved by summary judgment.

Even assuming the facts as asserted in the motion are true, there are genuine issues of fact with respect to the usurious nature of the loans made by Mr. Westman and the existence of any “corrupt intent.” At the very least, Plaintiff has made a case for denying and continuing summary judgment based on incomplete discovery at this stage of the proceedings. See Barfield v. Brierton, 883 F.2d 923 (11th Cir. 1989) (discussing the basis on which a summary judgment motion is premature). Hence, the motion is premature and must be denied.

It is therefore **ORDERED AND ADJUDGED** that Defendants’ Motion for Summary Judgment (Dkt. 56) is **DENIED**.

DONE AND ORDERED at Tampa, Florida, on August 18, 2010.

s/Richard A. Lazzara
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

¹ See dockets 63 & 66.