

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANDREW WHALEN,

Plaintiff,

DECISION AND ORDER

01-CV-6492L

v.


JP MORGAN CHASE BANK,

Defendant.

Pursuant to this Court's Order and Judgment granting summary judgment in favor of defendant (Dkt. ## 114, 115), the Clerk of Court taxed costs against plaintiff in the amount of \$5,024.47 (Dkt. #126).

Because the Second Circuit has reversed the Judgment of this Court, plaintiff now moves (Dkt. #127) to vacate the award of costs entered against plaintiff. That motion is granted. Costs entered in the District Court must be vacated if its decision is later reversed on appeal. To the extent plaintiff now seeks an award of costs in his favor, that motion is denied. No final order has been entered in favor of plaintiff and, therefore, an award of costs is premature.

IT IS SO ORDERED.



DAVID G. LARIMER

United States District Judge

Dated: Rochester, New York
January 7, 2010.