IN THE COURT OF THE
SHAKOPEE MDEWAKANTON SIOUX
(DAKOTA) COMMUNITY

FILED

AUG 2 0 2001

JEANNE A. KRIEGER
CLERK OF COURT

TRIBAL COURT
OF THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

SCOTT COUNTY STATE OF MINNESOTA

David Gregory Crooks,

Plaintiff,

v.

THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY, and The Shakopee Mdewakanton Sioux (Dakota) Community Business Council and The Shakopee Mdewakanton Sioux (Dakota) Community Enrollment Committee, and Certain Unknown Members of the Shakopee Mdewakanton Sioux (Dakota) Community Business Council Members and Certain Unknown Members of the Shakopee Mdewakanton Sioux (Dakota) Community Enrollment Committee.

Defendants.

Court File No. 468-00

OPINION & ORDER

On February 26, 2001, the Court issued an Order denying Plaintiffs' motion to vacate Defendant's notice of appeal and compel Defendant's Answer. The Court indicated it would be necessary to consider thoroughly the legal issue of whether to certify for appeal its October 31, 2000 Order denying summary judgment. Upon consideration of the parties' briefs and the legal issues presented, the Court determines that its October 31, 2000 denial of summary judgment should not be certified for appeal. Defendant's notice of appeal is vacated.

Appeal of a denial of summary judgment may be appropriate when, using the federal standard established by 28 U.S.C. § 1292(b) to the extent adopted by SMS(D)C R. Civ. P. 31 and

by this Court, (1) there is a controlling question of law, (2) there is substantial grounds for difference of opinion, and (3) an immediate appeal may materially advance the ultimate termination of litigation. *See* Little Six Inc. Board of Directors, et al. v. L.B. Smith et al., No. 010-97 (SMS(D)C Ct. App. May 28, 1998) (adopting substantive requirements of 28 U.S.C. § 1292(b)); *see also* WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 2d § 3930 (1996).

As a matter of prevailing jurisprudence, the interest of both trial and appellate courts in avoiding piecemeal litigation is stronger than a litigant's mere desire to appeal a denial of summary judgment in an effort to hasten the termination of litigation. Particularly when a trial court has held that questions of material fact preclude summary judgment, the appellate court should not be burdened with fact-dependant questions of law without first allowing the trial court an opportunity to do its job.

In this case, the Court held in its October 31, 2000 Order that summary judgment was inappropriate because factual questions remained about whether the tribal enrollment process was flawed to the point where it violated Plaintiff's rights under the Community's Constitution. The Court held that it has jurisdiction over Plaintiff's claim and is empowered to offer some potential relief from procedural deficiencies. *See, e.g.,* Weber and Maxwell v. SMS(D)C, No. 364-99 (SMS(D)C Tr. Ct. Dec. 22, 1999) at 3; Stovern et al. v. SMS(D)C, 031-92 (SMS(D)C Tr. Ct. May 30, 1995); Amundsen v. SMS(D)C Enrollment Committee, No. 049-94 (SMS(D)C Tr. Ct. Apr. 14, 1995) at 9. The Court's determination whether Plaintiff is entitled to relief for a violation of Community law while processing his application for enrollment depends on questions of fact that have not yet been revealed.

Under the substantive federal standard, even if there is a controlling question of law about which there is substantial grounds for disagreement, an immediate appeal would not materially advance the ultimate termination of litigation if there are fact questions remaining to be resolved. As stated by Wright, Miller & Cooper,

> There is indeed no reason to suppose that interlocutory appeals are to be certified for the purpose of inflicting upon courts of appeals an unaccustomed and ill-suited role as factfinders. Even when the question is the supposed question of law whether there are any genuine issues of material fact that preclude summary judgment, ordinarily it seems better to keep courts of appeals aloof from interlocutory embroilment with the factual content of the record.

WRIGHT, MILLER & COOPER, *supra*, at 427-28. The questions defendant would bring before the Court of Appeals—whether the Court may grant relief, the protection provided Plaintiff by the Community's Constitution, the relevance of Plaintiffs' questions regarding delay of his membership application, the effect of alleged procedural defects on the Council's decision, and whether the Council's decision may be challenged in Tribal Court—all may be addressed in due course following this Court's adjudication of Plaintiff's claims based on facts revealed at trial. The Court finds, therefore, that under the circumstances and issues relevant in this case, the Court's interest in avoiding piecemeal litigation and in fulfilling its duty as factfinder precludes certification for appeal of the Court's October 31, 2000 denial of summary judgment.

IT IS ORDERED that Defendant's November 27, 2000 Notice of Appeal is vacated.

IT IS FURTHER ORDERED that Defendant shall serve and file an Answer to Plaintiff's Complaint within twenty (20) days of receipt of this Order.

Date: August 20, 2001

Henry M. Buffalo, Jr.
Judge