

Tribes wanted \$500,000 to seal Duncan Mall deal

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Cowichan Tribes demanded a payout of \$500,000 from Duncan Mall to complete a deal which would have smoothed the way for Wal-Mart to build its new store on Tribes land.

Instead, Wal-Mart's real estate representative walked away from the table and has all but finalized a deal to be an anchor tenant in the new Cowichan Commons Shopping Centre to be built at Drinkwater Road and the Trans Canada Highway.

Documents filed in B.C. Supreme Court show that the

Government of Canada, Duncan Mall Ltd., the Cowichan Tribes members who own the mall land, and Calloway REIT, which holds leases to Wal-Mart properties across Western Canada, all wanted to complete a deal to sell the mall leases to Calloway.

However, the documents show an increasing frustration in dealing with Cowichan Tribes, which went so far as to threaten legal action against the other parties for breach of trust if they went ahead with a deal without Tribes' consent.

In what appears to be a last-ditch effort to save the deal, Robert Olma, of Duncan Mall Ltd., sent a letter to Tribes General Manager Ernie Elliot offering to pay a "bonus for the benefit of the Locatees (the land owners) and the Band in the amount of \$250,000 upon the transfer of the three leases" to Calloway.

When the deadline for a reply from Chief and Council passed five days later, Calloway walked away from the table Aug. 11, demanding that Duncan Mall prove, contrary to Cowichan Tribes claims, that its lease arrangements are in good standing.

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The Council of the Cowichan acted in bad faith by exercising the powers of their office for improper purposes

- From a lawsuit filed against Cowichan Tribes by the Attorney General of Canada and Duncan Mall Ltd.

Almost a month later, John Keating, Land Manager for Cowichan Tribes, responded to Olma on Cowichan Tribes letterhead, with copies to Elliot and others, presenting a "resolution" of the situation from Tribes' Land Management Committee.

Among the demands were a "\$250,000 cash payment to Cowichan Tribes on behalf of the lease recipients" and another "\$250,000 to be paid to Cowichan Tribes" to drop any legal action in relation to the leases.

Days after Calloway walked away from the table, Cowichan Tribes sued the Attorney General of Canada and Duncan Mall Ltd. for an undisclosed amount of money, claiming they

sought to alter the leases without Tribes' consent.

In return, the Attorney General of Canada and Duncan Mall Ltd. are suing Cowichan Tribes for an undisclosed amount of money, claiming the consent of Cowichan Tribes was not required and that "the Council of the Cowichan acted in bad faith by exercising the powers of their office for improper purposes."

Duncan Mall is claiming damages for:

- Loss of the bargain with Calloway;
- Expenses incurred in consultations with the Cowichan and negotiations with the Crown and Calloway;
- Inability to attract a purchaser for Duncan Mall's interests and improvements on the leased lands; and
- Prejudice to Duncan Mall's ability to obtain financing, upgrade the mall or attract quality, long-term tenants.

None of the claims from any of the parties have been proven in court.

Sources close to the land owners group, a 73 per cent majority of whom had voted in favour of a deal with Calloway, say they are actively considering filing their own lawsuit.