

## If I Had a Hammer

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In 2006, Fort Howard Senior Housing Associates entered into an enhanced-use lease with the VA Medical Center in Baltimore County, Maryland. Under this lease, the Senior Housing Associates had the right to occupy the property for 65 years, with an option to extend the lease for an additional 10 years. In exchange, Senior Housing had to pay rent, construct a 10,000 square-foot community outpatient clinic, and 1,300 onsite-multi-use residences. After several years, the VA became concerned about the status of the project and began sending notices of default to Senior Housing. On August 17, 2009, the VA terminated the lease for default, claiming that Senior Housing did not timely commence construction, maintain and secure the property, or pay its share of the utility bills.

Senior Housing sued in the U.S. Court of Federal Claims, claiming that the termination was wrongful because its failure to build the community center was excused by the force majeure clause in the lease. Senior Housing argued that it could not build the 1,300 units because Baltimore County's zoning laws only allowed for the construction of 500 units on the property. The Government moved for summary judgment in its favor, and Senior Housing opposed on the ground that there were genuine issues of material fact in dispute.

The Court explained that its standard for reviewing the motion involved "striking a balance between the judicial aversion to default terminations . . . and the fact that 'the Government, just as any other party, is entitled to receive that for which it has contracted and the right to accept only goods that conform to the specification.'" Applying this standard, the Court granted the Government's motion for summary judgment, explaining that the force majeure clause did not excuse Senior Housing's failure to comply with the lease terms noting that Senior Housing did not even seek a variance from the County to allow it to build the number of units called for in the lease. The Court also rejected Senior Housing's argument that the VA breached its duty of good faith and fair dealing by refusing to discuss potential lease modifications because it was not required to do so after signing the lease. Finally, the Court agreed with the Government it did not breach the lease by requiring that Senior Housing comply with state and local laws, including local zoning laws, explaining that the lease itself includes that requirement.

Read the full decision [here](#).