BORDEN, J., dissenting. I disagree with the majority that the contractual clause in question is unambiguous. I conclude, to the contrary, that it is ambiguous. I would, therefore, reverse the summary judgment of the trial court in the plaintiff's favor.

As the majority indicates, the parties stipulated to the following facts. Prior to April 13, 2007, the plaintiff, Anthony H. Salce, Sr., and the defendant, Walter Wolczek, each owned a 50 percent interest in Anwalt, LLC (Anwalt). As of May 30, 2007, Anwalt owned real property located at 2 Corporate Drive in Trumbull (premises). On or about April 13, 2007, the plaintiff and the defendant entered into a written buyout agreement pursuant to which the plaintiff agreed to sell his 50 percent interest in Anwalt to the defendant for $1.75 million (buyout agreement).

The contingency clause, clause 2 (b) of the buyout agreement, provided in relevant part: "Contingent Addition to Purchase Price. If within one year of the closing hereunder *any ownership interest* in the Premises . . . *is transferred* to a 'Non-Wolczek Person' *based on a whole property value of more than $3,500,000*, Buyer [defendant] shall pay to Seller [plaintiff] an additional purchase price equal to one-half the excess *at the same time as the transfer*. The 'excess' is the amount by which the whole property value for the transfer exceeds $3,500,000. The 'whole value' for any sale is the 100% value on which any percentage interest being transferred is based. For example, a one-quarter interest transferred for $1,000,000 would equate to a whole property value of $4,000,000. A 'Non-Wolczek Person' is someone other than Walter Wolczek or his immediate family member or lineal descendant." (Emphasis added.)

The parties closed on the sale of the plaintiff's interest in Anwalt on May 31, 2007. Subsequently, Anwalt conveyed the premises to Corporate Drive Office Center, LLC (Corporate Drive), an entity comprised of family members of the defendant.[1]

On March 19, 2008, within one year of the closing of the buyout agreement, Corporate Drive entered into a real property purchase agreement with Brian Vaughn (Vaughn purchase agreement) to sell the premises for $5.5 million to Vaughn or an entity designated by him. The Vaughn purchase agreement was executed by the defendant in his capacity as a member of Corporate Drive. Vaughn organized and designated an entity known as Corporate Drive, LLC, to take title to the premises. Neither Vaughn nor Corporate Drive, LLC is an immediate family member or lineal descendant of the defendant. On July 1, 2008, more than one year from

the date of the closing of the buyout agreement, the closing of the Vaughn purchase agreement for the sale of the premises took place.

In addition to these stipulated facts, the defendant asserts, and the plaintiff does not dispute, that the contract language in question was drawn by the plaintiff. Furthermore, the plaintiff asserts, and the defendant does not dispute, that both parties are commercially sophisticated and were represented by counsel.

Thus, the issue on appeal centers on the language of the contingency clause providing that if, within one year from May 31, 2007, "*any ownership interest* in the Premises . . . *is transferred* to a 'Non-Wolczek Person' *based on a whole property value of more than $3,500,000*, Buyer [defendant] shall pay to Seller [plaintiff] *an additional purchase price equal to one-half the excess at the same time as the transfer*. The 'excess' is the amount by which the whole property value for the transfer exceeds $3,500,000. *The 'whole value' for any sale is the 100% value on which any percentage interest being transferred is based. For example, a one-quarter interest transferred for $1,000,000 would equate to a whole property value of $4,000,000.*" (Emphasis added.) If, as the plaintiff contends and the majority concludes, that language unambiguously includes the entry by the defendant into the Vaughn purchase agreement on March 19, 2008—less than one year from the date of the closing of the buyout agreement—the plaintiff was entitled to summary judgment. If, however, as the defendant contends and I conclude, that language is susceptible to an alternative reasonable interpretation, namely, that the language in question refers to the actual closing of the Vaughn purchase agreement on July 1, 2008—more than one year from the date of the buyout agreement—the plaintiff was not entitled to summary judgment.[2]

The majority concludes that, on the basis of the doctrine of equitable conversion; see *Francis T. Zappone Co.* v. *Mark*, 197 Conn. 264, 268, 497 A.2d 32 (1985) ("A binding [real estate] sales agreement . . . passes equitable title, under the doctrine of equitable conversion, upon its execution . . . . The parties are bound from that instant and the formal transfer of 'paper' title can occur at some future date." [Citation omitted.]); there was a transfer of equitable title to Vaughn on March 19, 2008; that this accomplished a transfer of an ownership interest; and that, therefore, the contingency clause unambiguously included the entry into the Vaughn purchase agreement. If, however, there is any ambiguity—as that term is defined in our law—as to whether the buyout agreement language includes the entry into the Vaughn purchase agreement, the plaintiff was not entitled to summary judgment. That is because of the court's function in interpreting a contract.

The question of contract interpretation involves a

question of the intent of the parties, which ordinarily presents a question of fact for the ultimate fact-finder. *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 495, 746 A.2d 1277 (2000). Where, however, the language of the contract is unambiguous, its interpretation presents a question of law for the court. Id. Furthermore, whether the language is ambiguous is itself a question of law, upon which our review on appeal is de novo. *United Illuminating Co.* v. *Wisvest–Connecticut, LLC*, 259 Conn. 665, 669–70, 791 A.2d 546 (2002).

"In determining whether a contract is ambiguous, the words of the contract must be given their natural and ordinary meaning. *Kelly* v. *Figueiredo*, 223 Conn. 31, 35, 610 A.2d 1296 (1992). A contract is unambiguous when its language is clear and conveys a definite and precise intent. *Levine* v. *Massey*, 232 Conn. 272, 278, 654 A.2d 737 (1995). The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Id., 279. Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . *Stephan* v. *Pennsylvania General Ins. Co.*, 224 Conn. 758, 764, 621 A.2d 258 (1993). Furthermore, a presumption that the language used is definitive arises when, as in the present case, the contract at issue is between sophisticated parties and is commercial in nature. *Tallmadge Bros., Inc.* v. *Iroquois Gas Transmission System, L.P.* [supra, 252 Conn. 494–97]." (Internal quotation marks omitted.) Id., 670.

"In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Citations omitted; internal quotation marks omitted.) Id., 670–71. In addition, "[a] contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction." (Internal quotation marks omitted.) *Alstom Power, Inc.* v. *Balcke-Durr, Inc.*, 269 Conn. 599, 610, 849 A.2d 804 (2004); see also *Flaherty* v. *Flaherty*, 120 Conn. App. 266, 269, 990 A.2d 1274 (2010).

Thus, our task is not to determine which party's interpretation of the contract is the correct—or even the stronger—one. Our sole task is to determine, applying all of these guidelines, whether, on one hand, the language of the contract is clear and conveys a definite

and precise intent, or, on the other hand, the language of the contract is susceptible to more than one reasonable interpretation. I conclude that, applying these guidelines, the language of the contractual clause is susceptible to more than one reasonable interpretation, namely, that the time of the transfer of an ownership interest in the premises contemplated by the contingency clause was at the time of the closing of the Vaughn purchase agreement.

I therefore focus on the language of the contingency clause, that, if within the one year period, "any ownership interest in the Premises . . . is transferred to a 'Non-Wolczek Person' based on a whole property value of more than $3,500,000, Buyer [Wolczek] shall pay to Seller [Salce] an additional purchase price equal to one-half of the excess at the same time of the transfer. The 'excess' is the amount by which the whole property value for the transfer exceeds $3,500,000. The 'whole value' for any sale is the 100% value on which any percentage interest being transferred is based. For example, a one-quarter interest transferred for $1,000,000 would equate to a whole property value of $4,000,000." Viewed in the context of the entire transaction between the parties, it is a reasonable interpretation of this language that its general purpose was to ensure that, if the defendant sold the premises at a profit (measured by the parties' valuation when the defendant bought out the plaintiff) within one year of his purchase of the plaintiff's interest, the plaintiff would share proportionally in that profit.

It is true, as the majority concludes, that the language "any ownership interest . . . is transferred" could well have been intended to include the doctrine of equitable conversion. Our Supreme Court has stated: "Under the doctrine of equitable conversion . . . the purchaser of land under an executory contract is regarded as the owner, subject to the vendor's lien for the unpaid purchase price, and the vendor holds the legal title in trust for the purchaser. . . . The vendor's interest thereafter in equity is in the unpaid purchase price, and is treated as personalty . . . while the purchaser's interest is in the land and is treated as realty." (Citations omitted; internal quotation marks omitted.) *Francis T. Zappone Co.* v. *Mark*, supra, 197 Conn. 267. It is also true, however, that this statement regarding the purported limited interest of a contract seller before the closing is overbroad because, until the closing, the seller generally retains the right to possession of the premises, and remains responsible for its real estate taxes and for keeping it insured and maintained. See *Reid* v. *Landsberger*, 123 Conn. App. 260, 269, 1 A.3d 1149, cert. denied, 298 Conn. 933, 10 A.3d 517 (2010); see also 14 R. Powell & P. Rohan, Powell on Real Property §§ 81.01, 81.03 [3], pp. 81-6 through 81-8, 81-101 through 81-102. Thus, even under the doctrine of equitable conversion, a purchase agreement does not transfer a 100 percent

ownership interest in a property.

A close examination of the language of the contingency clause, read in the context of the entire buyout agreement and in the context of the transaction as a whole, discloses an alternative reasonable interpretation of the phrase "[i]f . . . any ownership interest . . . is transferred," namely, if a 100 percent ownership of the property or *any fractional interest therein* is transferred. That alternative reasonable interpretation is as follows.

The language of the contingency clause directly links the transfer of "any ownership interest" to the excess over the original "whole property value," established by the parties in their buyout agreement. The "whole property value" is then defined (although referred to here, not as the "whole property value" but as the "whole value") as "the 100% value on which *any percentage interest* being transferred is based." (Emphasis added.) That linkage is then directly linked to the sole example given by the parties themselves, namely, a transfer of a one-quarter interest in the property.

To explain further, under the language of the contingency clause, the only significance of the transfer of an ownership interest by the defendant is if the transfer is for more than the parties valued it. The consequence of such a transfer to a "Non-Wolczek Person" is that, if the transfer is for more than the "whole property value" of $3.5 million, the defendant must pay the plaintiff an amount equal to "one-half the excess at the time of the transfer," the "excess" being defined explicitly as "the amount by which the *whole property value for the transfer* exceeds $3,500,000." (Emphasis added.) Further, the "whole value" is defined specifically as "the 100% value on which *any percentage interest* being transferred is based." (Emphasis added.) This language is then illustrated by the single example chosen by the parties: "For example, a one-quarter interest transferred for $1,000,000 would equate to a whole property value of $4,000,000." This linkage—a transfer of an ownership interest, linked to the whole property value, linked to the 100 percent value or any fractional value—lends itself to the reasonable interpretation that, in using the language, "if any ownership interest . . . is transferred," the parties were referring to a 100 percent ownership interest or any fractional interest being transferred, rather than referring to an equitable interest being transferred, which is not easily equated to either a 100 percent ownership interest or a fraction thereof.

My point here is not that the majority is necessarily incorrect in its assertion that the doctrine of equitable conversion triggered the additional purchase price. My point is solely that it is not *unambiguously so* that the parties intended to refer to the doctrine of equitable conversion when they used the phrase "any ownership

interest . . . is transferred."

Furthermore, the language of the clause, "Buyer [defendant] shall pay to Seller [plaintiff] an additional purchase price equal to one-half the excess *at the same time as the transfer*," further renders the contingency clause ambiguous, because it supports the reasonable interpretation that such an obligation arises at the time of the closing on the Vaughn purchase agreement, rather than at the time of the entry into the Vaughn purchase agreement. It is a reasonable interpretation of this language that the parties intended the phrases "ownership interest . . . is transferred" and "at the same time as the transfer" to refer to the actual transfer of legal title—either the full legal title or some fractional interest thereof—at the closing, because that would, under ordinary expectations of real estate transactions, be the time when the defendant would have the funds available to satisfy that obligation. Indeed, the plaintiff acknowledged at oral argument before this court that his interpretation would obligate the defendant to pay the required excess at the time the defendant entered into the Vaughn purchase agreement, even if that agreement never closed through no fault of the defendant and, therefore, the defendant never realized the profit that the parties' buyout agreement contemplated he would share with the plaintiff. The somewhat unlikelihood of this scenario being what the parties intended by their language lends further support to the alternative reasonable interpretation that I propose.

It is also true, as the plaintiff argues, that the fact that the contract at issue is between sophisticated parties and is commercial in nature raises a presumption that the contract language is definitive. It is equally true, however, that in the present case, the plaintiff drafted the language in question, which ordinarily means that any ambiguity would be resolved against the drafter. See *Ramirez* v. *Health Net of the Northeast, Inc.*, 285 Conn. 1, 13–14, 938 A.2d 576 (2008). Although that does not itself create an ambiguity; see *Mongillo* v. *Commissioner of Transportation*, 214 Conn. 225, 231, 571 A.2d 112 (1990); I do think that, in the present case, the language in question is ambiguous enough to overcome the presumption, and the fact that the plaintiff drafted the language supports the reasonableness of the alternative interpretation offered by the defendant.

I would, therefore, reverse the judgment of the trial court and remand the case for further proceedings according to law.

[1] The plaintiff does not claim that this transfer was to a "Non-Wolczek Person" or that it triggered the contingency clause.

[2] Because the summary judgment was litigated and based solely on the language of the contract in question, it did not involve, and this appeal does not involve, the legal consequences, if any, of any claim by the plaintiff that the defendant intentionally structured the timing of the closing of the Vaughn purchase agreement to avoid the one year deadline.