PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2186

BYRON W. MARTZ,

Plaintiff - Appellee,

v.

DAY DEVELOPMENT COMPANY, L.C.; SOUTHLAWN LANE PROPERTIES, LLC,

Defendants - Appellants.

No. 19-2241

BYRON W. MARTZ,

Plaintiff - Appellant,

v.

DAY DEVELOPMENT COMPANY, L.C.; SOUTHLAWN LANE PROPERTIES, LLC,

Defendants - Appellees.

Appeals from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, Senior District Judge. (1:15-cv-03284-CCB)

Argued: January 27, 2022 Decided: May 24, 2022

Before NIEMEYER, DIAZ, and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Diaz joined. Judge Quattlebaum wrote a dissenting opinion.

ARGUED: Bruce Lawrence Marcus, MARCUSBONSIB, LLC, Greenbelt, Maryland, for Appellants/Cross-Appellees. Leslie A. Powell, POWELL, LLC, Frederick, Maryland, for Appellee/Cross-Appellant. **ON BRIEF:** Joseph A. Compofelice, Jr., MARCUSBONSIB, LLC, Greenbelt, Maryland, for Appellants/Cross-Appellees. Clark S. Adams, POWELL, LLC, Frederick, Maryland, for Appellee/Cross-Appellant.

NIEMEYER, Circuit Judge:

This is a breach of contract case that is governed by Maryland law. We have jurisdiction to hear it by reason of diversity jurisdiction. *See* 28 U.S.C. § 1332.

In connection with two undeveloped parcels of land in Frederick, Maryland, the owner and developer, Day Development Company, L.C., entered into a consulting services agreement with Byron Martz for each parcel. Under the agreements, Martz agreed, as to one parcel, to obtain City of Frederick approvals for a change in the "Approved Plan" to allow the developer to construct multi-story residential condominium units and, as to the other parcel, to perform unspecified services. Both consulting agreements provided, "In the event Martz obtains the Approvals for the Proposed Use, compensation as set forth below shall be due and payable by [Day Development] unto Martz." Each agreement then provided for how the compensation amount for Martz's services was to be calculated in the event that (1) the developer were to sell the parcel or (2) the developer were to elect to build on the parcel and obtain permits for doing so. It did not, however, address how the amount of compensation was to be calculated if the developer simply retained the parcels.

After Martz obtained the necessary approvals from the City of Frederick and otherwise performed the services he was hired to do, the developer refused payment because it had neither sold the parcels nor elected to build on them, which, it claimed, were conditions precedent to payment.

The district court rejected Day Development's argument and others similar to it and found that Day Development had breached the agreements in refusing payment. It filled the gap for the calculation of the amount of compensation by applying principles of unjust

enrichment, assessing the value of the benefit that Martz's services provided to the developer. On that basis, the court awarded Martz $1,941,250.

Day Development contends on appeal that the district court erred (1) in finding that the developer breached the consulting agreements when conditions precedent to compensation were not satisfied; (2) in rejecting its impossibility of performance defense; (3) in applying principles of unjust enrichment in connection with a claim based on a contract; and (4) in calculating unjust enrichment damages.

For the reasons that follow, we reject each challenge and affirm.

I

Martz and two others sold to predecessors of Day Development undeveloped property in Frederick, Maryland, which included a six-acre parcel approved for construction of a domiciliary care facility ("Domiciliary Care Parcel") and a four-acre parcel approved for commercial development ("Commercial Parcel").[*] In September 2003, Day Development entered into a Consulting Services Agreement with Martz with respect to the Domiciliary Care Parcel, retaining him "to have the approved use of the Domiciliary Care Parcel modified to permit the construction of at least 189 condominium units in a multistory building."

[*] In September 2005, Day Development conveyed the Commercial Parcel to Southlawn Lane Properties, LLC, for no money consideration, and the entities recorded that conveyance in 2012. Southlawn is an entity affiliated with Day Development and owned by the same members. The conveyance is of no moment to the issues on appeal, and accordingly, we will, for convenience, refer to both as "Day Development."

The agreement provided for the amount of Martz's compensation to be calculated based on two possible future events. If the property were sold by Day Development, he would receive 50% of the "Net Profit," and if Day Development elected to build the condominium units and obtained the necessary permits, he would receive 50% of the "Net Appraised Value" of the parcel. But no provision addressed the amount of Martz's compensation if the developer neither sold the property nor proceeded with building the units but rather just held the property. Under the agreement, Martz's compensation became payable on (1) the date the property was sold; (2) the date that building permits were obtained for construction on the property; or (3) January 1, 2015, whichever was the *earliest*.

Two years later, in September 2005, the parties executed an amendment to the Consulting Services Agreement to retain Martz to perform services in connection with the development of the Commercial Parcel. Although no further approvals with respect to that parcel were needed, the Amended Consulting Services Agreement mirrored the Consulting Services Agreement, and again, the amount of compensation was calculated based on two possible future events. If the parcel were sold, Martz's compensation would be 50% of the "Net Profit," and if the parcel were developed, Martz's compensation would be 50% of the "Net Appraised Value." As noted, however, the Amended Consulting Services Agreement also provided no method of calculating the amount of compensation if neither event occurred. Finally, the Amended Consulting Services Agreement again provided that Martz would be compensated on the earlier of (1) the date of sale of the parcel; (2) the date of obtaining a building permit for construction on the parcel; or (3) January 1, 2015.

Thereafter, Martz performed the services that he was hired to perform. Following meetings, lobbying efforts, and obtaining neighborhood consent, he succeeded in obtaining the necessary approvals from the City of Frederick. And after January 1, 2015, when neither the sale of the parcels nor the obtaining of building permits had occurred, Martz requested compensation for having obtained approvals for the proposed use. In response, the principal of Day Development told Martz, "I'm not going to pay you, and I'm just going to take the property from you."

Martz then commenced this action in four counts. In Count I, he alleged breach of the Consulting Services Agreement; in Count II, he alleged breach of the Amended Consulting Services Agreement; in Count III, he sought a declaratory judgment; and in Count IV, he alleged unjust enrichment, maintaining that his services conferred benefits to Day Development by increasing the value of the Domiciliary Care Parcel by at least $6.61 million and the Commercial Parcel by at least $1 million.

The district court partially granted Martz's motion for summary judgment on Counts I and II, rejecting Day Development's arguments (1) that Martz was not entitled to compensation because the conditions precedent of the agreements had not been satisfied and (2) that the agreements in any event had been terminated by the January 1, 2015 date. The court concluded that "Martz is owed appropriate compensation, which remains to be determined."

Following a bench trial, the court entered judgment for Martz using principles of unjust enrichment to calculate restitution because the agreements failed to address how to calculate Martz's compensation if the parcels had not been sold or developed but simply

held. It awarded Martz the amount of $1,941,250, representing $1,391,250 as Martz's 50% of the increased value of the Domiciliary Care Parcel and $550,000 as Martz's 50% of the increased value of the Commercial Parcel. The court concluded that those sums represented the value of how much Day Development was benefited by Martz's services. To compute those values, the court determined the value of each parcel before Martz performed his services and the value after he performed them, awarding Martz 50% of the increased value.

From the district court's judgment dated September 25, 2019, Day Development filed this appeal. Martz filed a conditional cross-appeal for the possibility that we would reverse the district court's unjust enrichment ruling.

II

Day Development contends first that the district court erred in failing to recognize that contractual conditions precedent to Martz's compensation had never been satisfied, and therefore Martz was not entitled to compensation. It argues that "in order to trigger the compensation provisions, the [Consulting Services Agreement] and [Amended Consulting Services Agreement] required the sale of the Domiciliary Care and Commercial Parcels to a third party *or* [Day Development's] obtaining building permits for [Day Development] to develop the parcels," and it was undisputed that those events never occurred. Thus, Day Development concludes, "[w]here a contractual duty is subject to a condition precedent, there is no duty of performance until the condition precedent has occurred or been performed," citing *J.E. Dunn Construction Co. v. S.R.P. Development*

Ltd. Partnership, 115 F. Supp. 3d 593, 606–07 (D. Md. 2015) (citing *Chirichella v. Erwin*, 310 A.2d 555 (Md. 1973)).

The district court rejected the argument based on its reading of the agreements' terms. It concluded that "the only condition precedent is that Martz obtain approval for the Proposed Use, and he unquestionably did so."

Under Maryland law, "[i]f the language of a contract is unambiguous, [Maryland courts] give effect to its plain meaning and do not contemplate what the parties may have subjectively intended by certain terms at the time of formation." *Cochran v. Norkunas*, 919 A.2d 700, 709 (Md. 2007). And the plain meaning is determined by "focus[ing] on the four corners of the agreement." *Id*. at 710. Under this objective approach, courts are to determine "what a reasonably prudent person in the same position would have understood as to the meaning of the agreement. Ambiguity arises if, to a reasonable person, the language used is susceptible of more than one meaning or is of doubtful meaning." *Id.* (citation omitted). Accordingly, we must focus initially on the text within the four corners of the agreements at issue to determine what a reasonably prudent person would have understood as to their meaning and give effect to that meaning. If we determine, however, that the agreements are ambiguous, then we would need to remand to enable the district court to make further findings of fact.

The relevant portions of the Consulting Services Agreement, which are also adopted in the Amended Consulting Services Agreement, provided:

> [Day Development] hereby engages Martz for the term of this Agreement to provide the services described herein.

* * *

> [Day Development] desires to have the approved use of the Domiciliary Care Parcel modified to permit the construction of at least 189 condominium units in a multistory building.
>
> Martz agrees that, as between the parties hereto, he shall have primary responsibility for making application to the City of Frederick to obtain an amendment to the Approved Plan, and an amendment to the Approved Preliminary Plan of Subdivision (if necessary) (the said amendment to the Approved Plan and Preliminary Subdivision Plan hereinafter referred to as the "Approvals"), so that the permitted use for the Domiciliary Care Parcel shall be a multistory residential condominium project (the "Proposed Use").

* * *

> In the event Martz *obtains the Approvals for the Proposed Use*, compensation as set forth below *shall be due and payable* by [Day Development] unto Martz.

(Emphasis added). The agreement then addressed how compensation was to be calculated and when it was to become payable. With respect to the *calculation* of compensation, it provided:

> If Martz obtains the Approvals for the Proposed Use but [Day Development] *subsequently sells* the Domiciliary Care Parcel for use as a condominium project to a third party, then the amount of the compensation shall be an amount equal to fifty percent (50%) of the "Net Profit" from the sale of the Domiciliary Care Parcel.

* * *

> If Martz obtains the Approvals and [Day Development] *obtains building permits and [Day Development] elects to build* the condominium units, then the amount of the compensation shall be an amount equal to fifty percent (50%) of the Net Appraised Value of the Domiciliary Care Parcel.

(Emphasis added). And as to *when* the compensation was to become payable, the agreement provided:

> In the event Martz obtains the Approvals for the Proposed Use as referenced in this agreement, compensation due from [Day Development] to Martz as described herein *shall be due and payable* by [Day Development] to Martz *upon the earlier to occur of the following*:
>
> [1] A sale of the Domiciliary Care Parcel, or a portion thereof;
>
> [2] Obtaining by [Day Development] . . . a building permit for the construction of any units on the Domiciliary Care Parcel . . . ; *or*
>
> [3] January 1, 2015.

(Emphasis added).

We conclude that a reasonably prudent person would read these provisions to give them one meaning as relevant to the issues here — that Martz was to be compensated for his "obtaining the Approvals for the Proposed Use," and that there were no other conditions precedent for earning compensation. And that simple condition was repeated when the agreements addressed *when* compensation was to become payable to Martz, noting that "in the event Martz obtains the Approvals for the Proposed Use," compensation shall be due and payable "upon the earlier to occur" of the following three events: a sale, obtaining a permit, or January 1, 2015. Thus, when January 1, 2015, arrived and the property had neither been sold nor developed, Martz was entitled to compensation as he had obtained "the Approvals for the Proposed Use" as referenced in the agreements.

Day Development argues nonetheless that "[t]he plain language of the [Consulting Services Agreement] and [the Amended Consulting Services Agreement] clearly identify two additional alternative conditions precedent to Martz receiving payment, to wit: the sale to a third party of either parcel *or* [Day Development's] obtaining building permits to develop the parcels itself." But this argument defies the plain meaning of the agreements'

language. The paragraphs of the agreements addressing the sale or development of the parcels were included solely to distinguish between two methods for calculating *the amount* of Martz's compensation, as those paragraphs are introduced by the clause: "[t]he compensation *shall be calculated* and paid as follows." (Emphasis added). Thus, the sale and development provisions were not conditions to compensation but rather circumstances for determining the amount of compensation. Similarly, in addressing *when* the compensation was to become due and payable, the agreements provided that it was "due and payable . . . upon the earlier to occur" of (1) a sale; (2) obtaining building permits; or (3) January 1, 2015. Again, these events, stated in the alternative, were not conditions to compensation but were alternative circumstances for *when* compensation was to become payable to Martz.

In short, we conclude that the objective meaning of the agreements provided for only one condition precedent for the obligation to pay compensation to Martz — that he have obtained "the Approvals for the Proposed Use." Because it is undisputed that he did so, he was entitled to compensation.

III

Day Development next claims that it was unable to obtain building permits for the development of the Commercial Parcel because the City of Frederick required "an extension of the roadway from Opossumtown Pike to Christopher's Crossing prior to any development of the Commercial Parcel" and that extension had not been completed by the City. It contends therefore that "it was never possible" for Day Development to develop

the Commercial Parcel before January 1, 2015, when payment became due to Martz, and that the district court "erred in holding that the doctrine of legal impossibility did not apply to [Day Development's] inability to sell or develop the Commercial Parcel, thereby precluding judgment in favor of Martz as to that parcel." Day Development thus concludes that, based on the doctrine of impossibility, it was not required to compensate Martz for services rendered in connection with the Commercial Parcel.

The doctrine of impossibility of performance under Maryland law provides that "a contractual duty is discharged where performance is subsequently prevented or prohibited by a judicial, executive, or administrative order, in the absence of circumstances showing either a contrary intention or contributing fault on the part of the person subject to the duty." *Acme Moving & Storage Corp. v. Bower*, 306 A.2d 545, 548 (Md. 1973) (quoting *State ex rel. Lane v. Dashiell*, 75 A.2d 348, 353–54 (Md. 1950)). But the district court here ruled that the doctrine did not apply because the plain language of the agreements "obligated the development company to pay Martz no later than January 1, 2015, *irrespective of the progress of any infrastructure* on the Parcels." *Martz v. Day Dev. Co.*, 416 F. Supp. 3d 517, 525 (D. Md. 2019) (emphasis added). We agree.

The impossibility doctrine identified by Day Development might appropriately be advanced by a person charged with the *development* of the Commercial Parcel, potentially relieving that person of the obligation to continue development. But the doctrine is irrelevant to Day Development's obligation to compensate Martz. Martz's obligation was to obtain "approvals," not to develop the property, and Day Development's obligation to

pay Martz arose when the approvals were obtained. The district court did not err in recognizing this.

IV

Day Development contends next that the district court erred in awarding Martz restitution under principles of unjust enrichment, a "quasi-contract" doctrine, because the relationship between the parties was fully and unambiguously governed by existing contracts — the Consulting Services Agreement and the Amended Consulting Services Agreement — and under Maryland law, unjust enrichment is barred when an enforceable contract exists. (Citing *Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 747 A.2d 600, 607–09 (Md. 2000) (noting that, with some exceptions, "no quasi-contractual claim can arise when a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests" (citations omitted)); *FLF, Inc. v. World Publ'ns, Inc.*, 999 F. Supp. 640, 642 (D. Md. 1998) (noting that "[i]t is settled law in Maryland, and elsewhere, that a claim for unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties"). Day Development thus maintains that by ordering the compensation of Martz on the basis of unjust enrichment, the district court impermissibly drew "new terms into the negotiated contract[s] to which the parties agreed to be bound."

In addressing the amount of compensation to award Martz, the court noted that neither agreement "provide[d] a method of calculating" the compensation in the circumstances where Day Development simply continued to hold the parcels. *Martz*, 416

F. Supp. 3d at 525–26. The court acknowledged that the agreements provided a method for calculating compensation if the parcels had been sold or developed, linking the compensation formula to those events. But it noted that neither agreement "address[ed] how much compensation [was] due to Martz for his work . . . in the present situation, where the development company elected to retain the Parcel[s] but ha[d] not obtained building permits or begun development." *Id*. at 526. It concluded that with that gap in the agreements, it was authorized by Maryland law to depart from the general rule of denying unjust enrichment when a contract exists and to fill the gap with restitution based on unjust enrichment. *See id*. (citing *Janusz v. Gilliam*, 947 A.2d 560, 567–68 (Md. 2008)). It noted that doing so would further the core purpose of the unjust enrichment doctrine — namely that "[a] person who receives a benefit by reason of an infringement of another person's interest, or of loss suffered by the other, owes restitution to him in the manner and amount necessary to prevent unjust enrichment." *Id*. (quoting *Md. Cas. Co. v. Blackstone Int'l, Ltd.*, 114 A.3d 676, 688 (Md. 2015)).

We agree with the district court. The two agreements failed to address how Martz was to be compensated if Day Development neither sold the parcels nor developed them but simply continued to hold them, and denying any payment because there was this gap in the agreements would unjustly enrich Day Development, which received the benefit of Martz's services. Day Development is correct in noting that when a contract exists, awarding restitution for unjust enrichment is, as a general rule, barred. But the Maryland courts also provide several exceptions, one of which addresses the circumstances here — allowing restitution for unjust enrichment "when the express contract does not fully address

a subject matter." *Janusz*, 947 A.2d at 567–68 (quoting *Dashiell*, 747 A.2d at 608–09). Therefore, we find no error in the district court's employment of unjust enrichment in the particular circumstances of this case.

V

Finally, Day Development challenges the amount of the district court's award, claiming that it was untethered to any facts and simply constituted "a combination of contract damages and pure conjecture unsupported by any evidence." Specifically, it contends that "no evidence was presented of the values of [the parcels] as of January 1, 2015," and that the 2013 appraisal conducted by Terrence McPherson (a real-estate appraisal expert hired by Day Development) on which the district court relied, was inappropriately based on "hypothetical assumptions."

The district court, however, explained its methodology, which it adopted to achieve equity. First, it noted that the compensation schemes provided in the agreements were "instructive" and that, in the circumstances addressed by the agreements, Martz "would receive 50 percent of the increased value — as established by sale price or appraisal — of the property." *Martz*, 416 F. Supp. 3d at 527. The stated schemes thus indicated that "Martz's consulting services should be 50 percent of any appreciation in value." *Id*. The court then undertook to determine the increase in value when the parcels were neither sold nor developed.

To do that, the court determined two values, the value of the parcels before Martz contributed his services and the value after. For the latter, the court used McPherson's

2013 appraisal of the parcels, concluding that it "provide[d] a reliable and equitable basis upon which to determine restitution." *Martz*, 916 F. Supp. 3d at 528. Thus, for the Domiciliary Care Parcel, the court accepted the 2013 McPherson appraisal figure of $4.2 million as the value after Martz performed his services, and it subtracted from that sum the amount that Day Development paid for the parcel before Martz's services. It then awarded Martz 50% of that sum, concluding that Martz was entitled to $1,391,250 for the services he performed with respect to that parcel. As to the Commercial Parcel, because Day Development did not pay any money to Martz initially for the parcel, the court simply used, as the basis for its award, 50% of the 2013 McPherson appraisal value of $1.1 million and thus concluded that Martz was owed $550,000. In making these calculations, the court recognized that while the 2013 McPherson appraisal was not a precise value of either parcel as of 2015, when Martz's compensation became payable, it had broad discretion in equity to determine the amount of restitution and that the McPherson appraisal's estimate of the value of each parcel as of 2013 was "the most equitable starting point for calculating restitution." *Id*. at 518 n.20. The court believed this because the 2013 McPherson appraisal had been performed before any dispute arose and had been performed for the benefit of Day Development. At bottom, in making these calculations, the court sought to derive a just value to compensate Martz *for the gain* to Day Development, *not the loss* to Martz. Accordingly, it awarded Martz a total of $1,941,250.

We conclude that the district court did not abuse its broad discretion in determining the measure of gain in the value of the parcels attributable to Martz's services, and therefore we reject Day Development's challenges to the court's computations.

The judgment of the district court is accordingly

AFFIRMED.

QUATTLEBAUM, Circuit Judge, dissenting:

One of the bedrock principles of our country is the freedom of individuals and entities to enter into agreements and expect that the terms of those agreements will be followed. When they are not and when courts are subsequently faced with a breach of contract action, courts must faithfully enforce and apply the terms of agreements as written. But sometimes written agreements are unclear and become capable of more than one meaning. It is then the courts' job to identify these ambiguities and determine what the parties intended. *See Cnty. Comm'rs of Charles Cnty. v. Saint Charles Assocs. Ltd. P'ship*, 784 A.2d 545, 556 (Md. 2001). I believe this presents one of those cases.

Judge Niemeyer ably describes the facts relevant to this appeal, so I will move straight to the pertinent provisions of the consulting agreements. In the paragraph entitled "Compensation," the agreements provide that if "Martz obtains the Approvals for the Proposed Use, compensation as set forth below shall be due and payable by [Day Development] unto Martz. The compensation shall be calculated and paid as follows." J.A. 52; *see also* J.A. 58. Then, the agreements describe two methods of compensation. One describes how Martz will be paid in the event Day Development sells the property. The other describes how Martz will be paid in the event Day Development develops the property.

After describing how Martz is to be paid, the agreements describe the timing of any compensation due Martz. The agreements provide that "compensation due from [Day Development] to Martz as described herein shall be due and payable by [Day Development] to Martz upon the earlier to occur of the following." J.A. 53, 58. The

agreements then list three potential triggering events requiring payment to be made: (1) the sale of the property, (2) Day Development's acquisition of a building permit to develop the property itself or (3) January 1, 2015.

The problem is that the agreements do not contain any provisions that describe what happens if Martz obtains the approvals for the proposed use but January 1, 2015, passes with Day Development neither having sold nor developed the property. That is what occurred here. The parties interpret the absence of such a provision in two different ways.

Martz argues that the agreements unambiguously express an agreement to compensate him if he obtained the approvals for the proposed use. Because Martz "unquestionably did so," J.A. 207, he insists that Day Development owes him compensation because January 1, 2015, has passed. He claims that the failure of the agreements to describe how Martz should be paid if January 1, 2015, passed without Day Development having sold or developed the property is a gap in the agreements. According to Martz, unjust enrichment principles require that gap to be filled in a way that pays him for the amount by which his services enriched Day Development.

Day Development does not deny that Martz fulfilled his part of the agreements. But it contends that Martz was not due payment until the property is either sold or developed. According to Day Development, those events are conditions precedent to Martz being paid.

The district court agreed with Martz as do my good colleagues in the majority. And I agree that is one reasonable way of reading the agreements. But in my view, it is not the only reasonable interpretation.

While the agreements provide that Martz' compensation is due and payable once he obtains the required approvals, they specify that such compensation is to be paid "as follows." J.A. 52, 58. The methods of compensation that "follow[]" require the property to either be sold or developed. So, while one might reasonably conclude that the parties forgot to include or failed to consider a provision that described how Martz would be paid if a third event happened—he obtained the approvals but Day Development neither sold nor developed the property—another fair reading is that the omission was intentional. Under that reading, Day Development did not owe Martz compensation until one of the two specified conditions took place.

Perhaps the best response to this alternative reading is the provision that provides that Martz shall be paid "upon the earlier to occur of the following" which is followed by a list of potential events. J.A. 53, 58. Once again, those events are the sale of the property, the obtaining of a building permit or January 1, 2015. As Martz argued and the district court found, the inclusion of January 1, 2015, as a date arguably indicates the parties contemplated Martz should be paid by that date even if Day Development had neither sold nor developed the property.

But that very same provision says that the compensation due Martz on the earliest of those events is only compensation "as described herein." J.A. 53, 58. And as already discussed, the compensation "described herein"—in other words, in the agreements—only contemplates Day Development selling or developing the property.

Therefore, the agreements are circular. They indicate Martz is due compensation once he obtained the approvals, which he did. They provide that he shall be compensated

on either the date the property is sold, the date the property is developed or January 1, 2015. But the only two methods to calculate Martz's compensation in the agreements are based on either the sale or the development of the property. In my view, it is not unreasonable to interpret the agreements to mean Martz was not to be paid until the property was either sold or developed.

Thus, we have two reasonable interpretations of the agreements. Under Maryland law, that means the agreements are ambiguous. *Sy-Lene of Wash., Inc. v. Starwood Urban Retail II, LLC*, 829 A.2d 540, 547 (Md. 2003) ("A contract is ambiguous if it is subject to more than one interpretation when read by a reasonably prudent person."). Accordingly, I would vacate the order granting Martz summary judgment and remand to the district court to take evidence, including extrinsic evidence, to determine the parties' intent and to resolve the ambiguity in accordance with Maryland law. *Cnty. Comm'rs of Charles Cnty.*, 784 A.2d at 556 ("If the contract is ambiguous, the court must consider any extrinsic evidence which sheds light on the intentions of the parties at the time of the execution of the contract.").[*]

Therefore, I respectfully dissent.

[*] Because I would vacate the district court's summary judgment order concluding that these agreements are unambiguous, I would not reach the other issues Day Development raises on appeal.