Rel: November 13, 2026

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0120

Huntsville Design and Construction, Inc.

v.

Linda Morard and Oliver Augustus Morard III

Appeal from Madison Circuit Court
(CV-25-900587)

WISE, Justice.

Huntsville Design and Construction, Inc. ("HDC"), appeals from the Madison Circuit Court's judgment dismissing its claims against Linda

Morard ("Linda") and Oliver Augustus Morard III ("Oliver"). We dismiss the appeal.

Facts and Procedural History

On April 8, 2025, HDC sued Linda, Oliver, CAM, LLC ("CAM"), David P. Bristol, and Acquisition Integration, LLC ("AI"), in the trial court. In its complaint HDC alleged that Linda, Oliver, and/or CAM (collectively referred to as "the CAM defendants") owned property located on 146 Jim Harding Way in Huntsville ("the subject property"). HDC further alleged that, on or about August 31, 2022, it entered into a contract with the CAM defendants "to construct a structure at" the subject property ("the CAM contract").

HDC further alleged that, on or about December 9, 2022, it entered into a contract with Bristol and AI (collectively referred to as "the AI defendants") "to construct a structure at" the subject property, which, HDC asserted, the AI defendants "intended on purchasing"; HDC's contract with the AI defendants is referred to as "the AI contract." HDC alleged that, "at all times, it acted in accord with the contract terms established by the parties, in reference to the aforementioned contracts" and that it had completed the terms of the contracts.

HDC further alleged that the AI defendants did not complete payments to HDC; that, as of October 31, 2023, the AI defendants owed an outstanding balance of $305,019 to HDC; that Bristol had sent text messages in which he stated that he would issue payment to HDC immediately; that, on January 26, 2025, Bristol wrote a check on AI's account for the amount owed, but that check was returned by the bank for insufficient funds; and that HDC had made numerous attempts to collect the outstanding balance. HDC further alleged:

> "That prior to contracting with [Bristol] and [AI] on December 9, 2022, [HDC] expressed concerns about contracting with [Bristol] and [AI] to [Linda], due to not having done business with them before. [Linda] responded by stating that, if [AI] did not pay [HDC] under its contract, that [Linda] would pay what was due under the AI Contract, thereby inducing [HDC] to enter the AI Contract."

HDC alleged that, on July 18, 2024, it "filed a Mechanic's Lien against the [subject] property" in the Madison Probate Court; that, "[t]hereafter, Linda, Oliver, and/or CAM, as the property owners, sold the [subject] property"; that, on December 26, 2024, Linda made the final payment under the CAM contract; and that the CAM defendants failed or refused to pay the outstanding balance owed to HDC under the AI contract. It further alleged "[t]hat the Defendants intentionally and/or

recklessly accepted the Plaintiff's construction work, without intending to pay the entire contract costs."

HDC alleged a claim of "breach of implied/express contract" against Linda. In that claim, HDC alleged that, before HDC entered into the AI contract, Linda had "promised to pay any outstanding amounts owed to [HDC] under the AI contract, if [Bristol] and/or [AI] did not pay [HDC]," and that Linda had failed to pay the outstanding amounts that were owed to HDC under the AI contract. HDC also asserted claims of fraudulent misrepresentation and/or innocent misrepresentation against CAM and Linda. With regard to the misrepresentation claim against CAM, HDC alleged that, before it entered into the AI contract, Linda "on behalf of [CAM], asked [HDC] to contract with [AI] and [Bristol] to build out the building owned by [CAM] and/or [Linda] located at [the subject property] and[,] in exchange for [HDC's] doing so, promised to pay any outstanding amounts owed to [HDC] under the AI contract if [Bristol] and/or [AI] did not pay [HDC]." It also alleged:

> "51. That, throughout this process, Linda Morard, individually and on behalf of [CAM] represented that she fully intended to pay the amounts owed to [HDC] for the work performed at said property under the AI Contract. [HDC] believed these representations, given the assurances asserted by [Linda] and [CAM] and due to their repetitive business

> relationship, to its detriment. [Linda] individually and on behalf of [CAM] made these representations recklessly and/or intentionally to secure construction and improvement work by [HDC] while intending to not comply with the contract terms agreed to by the parties."

With regard to the misrepresentation claim against Linda, the complaint alleged that, before HDC entered into the AI contract, Linda had "promised to pay any outstanding amounts owed to [HDC] under the AI contract if [Bristol] and/or [AI] did not pay [HDC]." It further alleged:

> "59. That, throughout this process, [Linda] represented that she fully intended to pay the amounts owed to [HDC] for the work performed at said property, including any outstanding amounts owed under the AI Contract. [HDC] believed these representations, given the relationship between [HDC] and [Linda], to its detriment. [Linda] made these representations recklessly and/or intentionally to secure construction and improvement work by [HDC] while intending to not comply with the contract terms agreed to by the parties.
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> "60. Further, the representations made by [Linda] regarding her promise to pay any outstanding amounts owed under the AI Contract if [Bristol] and/or AI did not pay [HDC] fraudulent [sic] induced [HDC] to enter into the December 9, 2022, contract with said Defendants, to [HDC's] detriment.
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> "....
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> "62. That throughout this process, [Linda], individually and on behalf of [CAM], represented that she fully intended to pay the amounts owed to [HDC] for the work performed at said property under the AI Contract. [HDC] believed these representations, given the assurances asserted by [Linda],

> and due to their repetitive business relationship, to its detriment. [Linda] made these representations recklessly and/or intentionally to secure construction and improvement work by [HDC] while intending to not comply with the contract terms agreed to by the parties."

HDC also asserted a bad-faith claim against Linda in which it again alleged that, before it entered into the AI contract, Linda had agreed to pay any outstanding balances owed to HDC under the AI contract in the event that Bristol and/or AI did not pay.

HDC also asserted an unjust-enrichment claim against each of the CAM defendants in which it alleged that it had provided the CAM defendants "with something of value, i.e., construction improvement services," and that the CAM defendants had "acknowledged, accepted and benefitted from the services and improvements provided to [them] by [HDC], and [have] further profited from said services and improvements through the sale of [the subject property] without providing payment of the outstanding amounts to" HDC. HDC also asserted a quantum meruit claim and a suppression claim against each of the CAM defendants. Finally, HDC asserted claims of breach of implied/express contract, fraudulent misrepresentation and/or innocent

misrepresentation, bad faith, unjust enrichment, quantum meruit, and suppression against the AI defendants.[1]

On May 14, 2025, the CAM defendants filed a motion to dismiss pursuant to Rule 12(b)(6), Ala. R. Civ. P. In their motion, the CAM defendants argued that HDC's claims against them were barred by the Statute of Frauds because the alleged promise to pay the debts of the AI defendants was not in writing.

On May 16, 2025, the trial court entered an order stating:

> "The Court has received the MOTION TO DISMISS, filed on behalf of Defendants Linda Morard, Oliver A. Morard III and CAM, LLC, and has considered the grounds and determines the Statute of Frauds is applicable to their claims. [HDC] shall produce for the Court within five days any writing by Linda Morard, or an authorized representative of CAM, LLC, wherein they promise to cover the outstanding debt of David P. Bristol or AI ….
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> "In the event that no such writing is produced or exists, the case against those specific Defendants will be dismissed."

On May 19, 2025, HDC filed a motion for an extension of time to respond to the trial court's May 16, 2025, order. In that motion, plaintiff's counsel stated, in part:

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[1]On May 21, 2025, the trial court entered a default judgment in favor of HDC and against Bristol.

> "The undersigned believes there may be a writing in existence that will directly satisfy the Defendants' Statute of Frauds argument. Additionally, the undersigned understands Defendants' argument; however, it is believed that this issue will be fall [sic] under one of the exceptions to the Statute of Frauds requirements. Prior to the undersigned's illness, the undersigned had located case precedent which appears to have directly contradicted the Defendants' Statute of Frauds argument. [HDC] would request that [it] be provided an opportunity, via Response and Hearing, to present this argument to this Honorable Court."

The trial court granted HDC's motion for an extension of time.

On May 28, 2025, HDC filed a motion to alter, amend, or vacate the trial court's May 16, 2025, order requiring the production of a writing. The CAM defendants filed a response in opposition to HDC's motion to alter, amend, or vacate. The trial court entered an order denying CAM's motion to alter, amend, or vacate. However, it set a hearing on the CAM defendants' motion to dismiss. In that order, the trial court stated, in part: "Thirty minutes is allotted for the hearing and the signed writing, wherein Defendant Linda Morard obligates herself to [HDC], must be produced, or the case against her will be DISMISSED." (Emphasis in original.)

On June 4, 2025, HDC filed its response to the CAM defendants' motion to dismiss. In its response, HDC argued that Linda's promise to

pay was "an original agreement" that was not within the Statute of Frauds. On June 5, 2025, the trial court conducted a hearing on the motion to dismiss. During the hearing, the trial court stated that it would take the matter under advisement.

On June 11, 2025, the trial court entered an order in which it stayed its ruling on the motion to dismiss "until September 12, 2025, when a hearing will be held at 9:00 a.m." It further ordered the parties to proceed with discovery. Finally, the trial court stated: "Based upon the pleadings of the parties thus far, the Court still believes that the Statute of Fraud[s] applies to collateral promises by a third party to pay for the debt of another." The trial court subsequently continued the hearing to October 30, 2025.

On October 30, 2025, the trial court conducted another hearing on the motion to dismiss. On that same date, HDC filed a motion for relief pursuant to Rule 56(f), Ala. R. Civ. P. In that motion, HDC requested that the trial court either deny the CAM defendants' motion to dismiss "as a premature Motion for Summary Judgment, pursuant to Rule 56(f) of the Alabama Rules of Civil Procedure, or (2) defer its ruling on the …

[m]otion to permit crucial discovery to take place." HDC also filed a supplement to its response to the motion to dismiss.

On November 4, 2025, the trial court entered an order on the motion to dismiss. In its order, the trial court stated, in pertinent part:

> "After considering the Motions to Dismiss, [HDC's] brief in opposition to same and oral arguments by counsel, the Court rules as follows:
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> "1) the statute of fraud[s] applies in this case as to the Morards versus [HDC], as [HDC] was given several months to produce a writing binding those Defendants to the Bristol debt to substantiate its claim of obligation and it has failed.
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> "2) the case against LINDA MORARD and OLIVER MORARD, III, is hereby dismissed;
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> "3) the case of unjust enrichment may still be applicable to CAM, LLC, depending on whether facts to support a claim at trial with any degree of certainty is proven.
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> "The Court does note that a default judgment has already been ENTERED against defendant DAVID P. BRISTOL."

(Capitalization in original.) On December 4, 2025, HDC filed a motion to alter, amend, or vacate, which the trial court denied.

On January 16, 2026, HDC filed a motion asking the trial to certify its order dismissing the claims against Linda and Oliver as a final judgment, pursuant to Rule 54(b), Ala. R. Civ. P. On January 21, 2026,

the trial court entered an order in which it determined that "[t]here is no just cause for delay" and certified its November 4, 2025, order dismissing all the claims against Linda and Oliver as a final judgment, pursuant to Rule 54(b). This appeal followed.

Discussion

Initially, we must determine whether the trial court properly certified its order dismissing the claims against Linda and Oliver as a final judgment, pursuant to Rule 54(b). Neither side has addressed this issue. However, "[t]his Court has an obligation to 'scrutinize the propriety of Rule 54(b) certifications even in cases where no party addresses this "fundamental issue."' Alabama Ins. Underwriting Ass'n v. Skinner, 352 So. 3d 688, 690 (Ala. 2021) (citation omitted)." CMB Holdings Grp. v. City of Tuscaloosa, 414 So. 3d 101, 105 (Ala. 2024). With regard to Rule 54(b) certifications, this Court has stated:

"Rule 54(b) provides, in pertinent part:

> "'When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason

> for delay and upon an express direction for the entry of judgment.'

"Nevertheless, '"[t]he trial court cannot confer appellate jurisdiction upon this [C]ourt through directing entry of judgment under Rule 54(b) if the judgment is not otherwise 'final.'"' Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 362 (Ala. 2004) (quoting Robinson v. Computer Servicenters, Inc., 360 So. 2d 299, 302 (Ala. 1978)). And this Court must dismiss an appeal when we determine that the order appealed from is not a final judgment, even when a trial court has entered a Rule 54(b) certification. See Hammock v. Wal-Mart Stores, Inc., 8 So. 3d 939, 941 (Ala. 2008); see also, e.g., Harlan Home Builders, Inc. v. Hayslip, 58 So. 3d 102, 108 n.3 (Ala. 2010) ('[T]he summary judgment entered by the trial court was not a final judgment that was properly appealable to this Court at the time it was entered or at the time it was purportedly certified as final by the trial court; therefore, this Court acquired no jurisdiction over the purported appeal of that judgment.').

> "'This Court looks with some disfavor upon certifications under Rule 54(b).
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> > "'"It bears repeating, here, that '"[c]ertifications under Rule 54(b) should be entered only in exceptional cases and should not be entered routinely."' State v. Lawhorn, 830 So. 2d 720, 725 (Ala. 2002) (quoting Baker v. Bennett, 644 So. 2d 901, 903 (Ala. 1994), citing in turn Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373 (Ala. 1987)). '"'Appellate review in a piecemeal fashion is not favored.'"' Goldome Credit Corp. [v. Player, 869 So. 2d 1146, 1148 (Ala. Civ. App. 2003)] (quoting Harper Sales Co.

> v. Brown, Stagner, Richardson, Inc., 742 So. 2d 190, 192 (Ala. Civ. App. 1999), quoting in turn Brown v. Whitaker Contracting Corp., 681 So. 2d 226, 229 (Ala. Civ. App. 1996)) (emphasis added)."
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> "'Dzwonkowski v. Sonitrol of Mobile, Inc., 892 So. 2d 354, 363 (Ala. 2004). Also, a Rule 54(b) certification should not be entered if the issues in the claim being certified and a claim that will remain pending in the trial court "'are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results.'" Clarke-Mobile Counties Gas Dist. v. Prior Energy Corp., 834 So. 2d 88, 95 (Ala. 2002) (quoting Branch v. SouthTrust Bank of Dothan, N.A., 514 So. 2d 1373, 1374 (Ala. 1987)).'
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> "Schlarb v. Lee, 955 So. 2d 418, 419-20 (Ala. 2006). See also, e.g., Scott v. Advanced Pharm. Consultants, Inc., 84 F.4th 952, 962 (11th Cir. 2023) (concluding that certification of finality was not proper when the summary judgment adjudicated all counts against one defendant but left the identical counts against the other defendant unadjudicated and that adjudicating the same counts separately would be duplicative, waste substantial judicial resources, and run the risk of inconsistent rulings in different appeals)."

Hulsey v. Build Art, LLC, [Ms. SC-2025-0564, Apr. 17, 2026] ___ So. 3d ___, ___ (Ala. 2026).

In this case, HDC's claims against CAM and HDC's claims against Linda and Oliver all arise from the same operative facts. The complaint included allegations that Linda, Oliver, and/or CAM were the owners of

the subject property; that the AI contract provided that HDC was "to construct a structure" at the subject property; and that the AI defendants had intended on purchasing the subject property. It further alleged that Linda, "on behalf of [CAM], asked [HDC] to contract with [AI] and [Bristol] to build out the building owned by [CAM] and or [Linda] located at [the subject property] and[,] in exchange for [HDC's] doing so, promised to pay any outstanding amounts owed to [HDC] under the AI contract if [Bristol] and/or [AI] did not pay [HDC]." The complaint also alleged that Bristol and AI had not paid the balance owed under the AI contract and that Linda, Oliver, and CAM had benefited from the work performed by HDC on the subject property without providing payment for the outstanding amounts owed to HDC. Thus, HDC's claims against CAM and the claims against Linda and Oliver that are at issue in this appeal "'"'are so closely intertwined that separate adjudication would pose an unreasonable risk of inconsistent results.'"'" Hulsey, ___ So. 3d at ___ (citations omitted). Accordingly, the trial court exceeded its discretion when it certified its order dismissing the claims against Linda and Oliver as a final judgment. As we have stated, "'"[a] nonfinal judgment will not support an appeal."' Schlarb[v. Lee], 955 So. 2d [418,]

420 [(Ala. 2006)] (quoting Dzwonkowski[v. Sonitrol of Mobile, Inc.], 892 So. 2d [354,] 363 [(Ala. 2004)])." Hulsey, ___ So. 3d at ___. Therefore, we dismiss this appeal.

APPEAL DISMISSED.

Cook and McCool, JJ., concur.

Stewart, C.J., and Bryan, J., concur in the result.

Sellers, J., dissents, with opinion, which Mendheim and Parker, JJ., join.

Shaw, J., recuses himself.

SELLERS, Justice (dissenting).

I respectfully dissent from the Court's judgment dismissing the appeal filed by Huntsville Design and Construction, Inc. ("HDC"), on the basis that the Madison Circuit Court ("the trial court") exceeded its discretion in certifying its order dismissing HDC's claims against Linda Morard ("Linda") and Oliver Augustus Morard III ("Oliver") as a final judgment, pursuant to Rule 54(b), Ala. R. Civ. P. Because I believe that the trial court properly certified the order as a final judgment, pursuant to Rule 54(b), I would address HDC's argument alleging that the trial court erred in dismissing its claims against Linda and Oliver on the basis that those claims are barred by the Statute of Frauds because, in my opinion, they are not.

This appeal involves two contracts executed by HDC concerning property located on Jim Harding Way ("the subject property") that Linda, Oliver, and CAM, LLC ("the CAM parties"), owned and that David P. Bristol and Acquisition Integration, LLC ("the AI parties"), intended to purchase. According to the allegations of its complaint, HDC contracted with the CAM parties to build a structure on the subject property in August 2022 ("the CAM contract"). In December 2022, HDC contracted

with the AI parties to perform "certain specialized construction" to the subject property ("the AI contract"), which the AI parties were then under contract to purchase. In its complaint, HDC alleges that, before entering into the AI contract, it was concerned about doing business with the AI parties:

> "[P]rior to contracting with [the AI parties] on December 9, 2022, [HDC] expressed concerns about contracting with [the AI parties] to Linda Morard, due to not having done business with them before. Defendant Linda Morard responded by stating that, if Acquisition Integration, LLC did not pay [HDC] under its contract, that Linda Morard would pay what was due under the AI Contract, thereby inducing [HDC] to enter the AI Contract."

HDC fulfilled its obligations under the AI contract and attempted unsuccessfully to receive full payment from the AI parties, who had defaulted on their contract to buy the subject property and subsequently filed for bankruptcy. The CAM parties refused to cover the AI parties' shortfall, leaving an unpaid balance of $305,019. HDC filed a mechanic's lien on the subject property, but the CAM parties sold the property before the lien could be enforced. HDC alleged that the CAM parties knew of the AI parties' financial troubles and induced HDC to enter into the AI contract with the understanding that the benefit of the work performed would flow to themselves:

> "…Defendant [Linda Morard] suppressed and concealed material facts from [HDC] in order to induce [HDC] to enter into the contract with Defendant Bristol and Defendant AI to provide work and improvements to the building that … CAM, LLC, would profit from once it became apparent that Defendant Bristol and/or AI had defaulted on the contract to purchase the [subject property]. …"
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> "…Defendant Linda Morard has acknowledged, accepted, and benefitted from the services and improvements provided to Defendant by [HDC], and has further profited from said services and improvements through the sale of [the subject property]. …"
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> "…Defendant Oliver Augustus Morard, III, has acknowledged, accepted, and benefitted from the services and improvements provided to Defendant by [HDC], and has further profited from said services and improvements through the sale of [the subject property]. …"

The Statute of Frauds requires every "special promise to answer for the debt, default or miscarriage of another" to be in writing and signed by the party to be charged. Ala. Code 1975, § 8-9-2. However, an exception exists for so-called "original agreements," regarding which evidence of a writing is not required to be enforceable. See Builders Supply & Salvage Co. v. Regions Bank, 79 So. 3d 638, 643-44 (Ala. Civ. App. 2010) (noting that an original agreement is one in which the "'effect of the promise is

to pay the debt of another, but the object of the promise is to promote some purpose of the promisor'") (citation omitted); Phillips Brokerage v. Professional Pers. Consultants, 517 So. 2d 1, 2 (Ala. Civ. App. 1987) ("A promise to pay the debt of another which is based upon a new and valuable consideration which is beneficial to the promisor is not within the [S]tatute [of Frauds].").

Courts determine whether an agreement is original and thus exempt from the Statute of Frauds by determining its main purpose:

> "'A contract that all or part of a duty of a third person to the promise shall be satisfied is not within the Statute of Frauds as a promise to answer for the duty of another if the consideration for the promise is in fact or apparently desired by the promisor mainly for his own economic advantage, rather than in order to benefit the third person.'"

Alexander, Corder, Plunk, Baker & Shelly, P.C. v. Jackson, 811 So. 2d 506, 513 (Ala. 2001) (quoting Restatement (Second) of Contracts, § 116 (A.L.I. 1981)) (emphasis added). Jackson held that a question of fact existed as to whether a contract to pay another's debt was an original agreement outside the Statute of Frauds because its purpose was "to promote [the promisor's] own interest." Id.

In this case, the trial court granted Linda and Oliver's motion to dismiss, finding that Linda's alleged agreement to cover the AI parties'

debt was not an original agreement and, thus, was subject to the Statute of Frauds. However, at this stage of the proceedings, the applicable standard of review required the trial court to view the allegations of the complaint most strongly in HDC's favor and to consider only whether it might possibly prevail if it can prove its allegations. See Ex parte Abbott Lab'ys, 342 So. 3d 186, 194 (Ala. 2021).

In my view, HDC's complaint alleged sufficient facts that, if true, would justify a finding that the alleged agreement was original and not subject to the Statute of Frauds. Id. Viewing the allegations of the complaint most strongly in favor of HDC, a trier of fact could possibly conclude that HDC would not have contracted directly with the AI parties without Linda's promise; that Linda and/or CAM were not detached guarantors of the AI parties' debt and had agreed to cover the AI parties' debt not merely for the AI parties' benefit, but for their own economic gain; that they received the benefit of that promise in the form of increased property value because they retained ownership of the subject property while the improvements were made; that, by passing the cost of the improvements on to the AI parties, the CAM parties lowered their overhead and increased their potential profit; that the CAM parties knew

that the AI parties had or likely would default on their purchase contract; that, after the AI parties defaulted on the purchase contract, the CAM parties essentially inherited the improvements for free and cashed in by selling the subject property to a third party; and that the benefit of Linda's promise flowed directly to the CAM parties. See Smith v. Rials, 595 So. 2d 490, 492 (Ala. Civ. App. 1991) (holding that a landlord's instructing a repairman to finish work under a contract signed by the tenant was an original agreement because "[t]he benefit derived from [the repairman's] completion of the project flowed directly to [the landlord]").

Because HDC sufficiently alleged facts by which it could succeed in establishing that Linda's alleged oral agreement was an "original agreement" benefiting herself and Oliver, dismissing the claims against them at the pleading stage was premature. See Fendley v. Dozier Hardware Co., 449 So. 2d 1236, 1238-39 (Ala. 1984) (holding that the trial court properly denied a motion for a directed verdict and submitted the case to the jury when questions of fact existed about whether an original agreement).

The main opinion concludes that the remaining claims in this case are so intertwined with the dismissed claims that considering the issues in this appeal now will create a risk of inconsistent results. In my view, however, the risk of such an inconsistency is unclear. If the Statute of Frauds bars the claims at issue, the remaining claims will proceed beyond the present preliminary pleading stage. If the Statute of Frauds does not justify dismissing the claims, then all claims will proceed. I fail to see an unreasonable risk of inconsistent results.

Accordingly, because HDC's complaint sufficiently alleges facts that, when viewed in a light most favorable to HDC, could possibly show that the alleged agreement was an original agreement and not subject to the Statute of Frauds, I would reverse the trial court's order dismissing the claims against Linda and Oliver and remand the cause for further proceedings.

Mendheim and Parker, JJ., concur.