

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

ROBERT MORTENSEN,  
Individually, and as Trustee,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 1D06-4502

JAMES G. GATES and  
KIMBERLY STADTHER  
GATES, husband and wife,  
SWEET WATER REALTY,  
INC., KAREN K. CUDD,  
and DEBI FREED,

Appellees.

---

Opinion filed December 13, 2006.

An appeal from the Circuit Court for Escambia County.  
Nickolas P. Geeker, Judge.

Charles P. Hoskin of Emmanuel, Sheppard and Condon, Pensacola, for Appellant.

Bill B. McEachern, Jr., Pensacola and James L. Chase of Chase, Quinnell and Jackson,  
Pensacola, for Appellees.

PER CURIAM.

Having considered the appellant's response to this Court's order dated September 20, 2006, this appeal is hereby DISMISSED. The order on appeal merely granted a motion for summary judgment without entering judgment. Therefore, the

order did not bring an end to the judicial labor as to the claim for specific performance. Dixon v. Allstate Ins. Co., 609 So. 2d 71, 72 (Fla. 1st DCA 1992). Additionally, a claim for specific performance of a contract is related to a claim for damages for breach of the same contract. “The test is whether the counts arise from a set of common facts or a single transaction, not whether different legal theories or additional facts are involved in the separate counts.” Altair Maintenance Serv., Inc. v. GBS Excavating, Inc., 655 So. 2d 1281, 1282 (Fla. 4th DCA 1995).

The “Appellant’s Motion for Extention [sic] of Time to File Initial Brief,” filed in this Court on October 26, 2006, is denied as moot.

BENTON, VAN NORTWICK, and PADOVANO, JJ., CONCUR.