

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM O. FRANZ,	§	
	§	No. 355, 2005
Petitioner Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
KATHLEEN CLUFF,	§	in and for New Castle County
	§	No. CN99-08288
Respondent Below,	§	
Appellee.	§	

Submitted: December 7, 2005

Decided: January 24, 2006

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

ORDER

This 24th day of January, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) William O. Franz appeals from a decision of the Family Court dismissing his petition for specific performance of a separation agreement. He argues that he should have been allowed to present evidence that would have established the true nature of his ex-wife's obligations under the agreement.

2) In his motion for reargument, Franz explained that he was seeking reformation of the separation agreement. The Family Court denied the motion for

reargument, stating that “[t]his is not a reformation of contract action, but a specific performance action.”

3) The Family Court, technically, was correct. Franz filed a petition seeking enforcement of a separation agreement that, by its terms, did not require his ex-wife to list the home for sale or refinance the outstanding mortgage. It appears that what Franz actually seeks is reformation of the separation agreement. Since his petition did not correctly identify such a claim, it was not error for the Family Court to dismiss the petition.

4) It is unfortunate that, in light of the Family Court’s decision, Franz did not simply revise his pleading and file a petition for reformation. Although we affirm the decision, we also hold that Franz’s petition for specific performance does not preclude him from immediately seeking other relief with respect to the separation agreement.

BY THE COURT:

/s/ Carolyn Berger
Justice