

PRE-NUPTIAL AGREEMENTS: THE RADMACHER V GRANATINO DECISION

RADMACHER V GRANATINO

The big money case of *Radmacher v Granatino* came to court again for a second time this year following its first appearance in the High Court last summer. Katrin Radmacher is from one of Germany's wealthiest families and Nicolas Granatino, of French origin, was an investment banker, now turned bio-technology researcher at Oxford. The couple were married in 1998 and separated 8 years later. They have 2 children.

At the time of their marriage the couple entered into a pre-nuptial agreement in Germany that provided, in the event of divorce, that the husband would receive no financial award. The pre-nuptial agreement would have been binding in France and Germany and the wife argued that this meant that the husband should have no award even though the case was being heard in England.

At first instance, the judge, Mrs Justice Baron, awarded Mr Granatino a lump sum of £5.56m to cover his housing needs, debts and to provide him with a sum to invest to produce an income. The wife was to pay this from her assets; the full extent of these was not clear but she had £54m held in various investment accounts together with a shareholding in the family business said by the husband's team to have a capital value of at least £52m. The wife appealed to the Court of Appeal on the basis that the Mrs Justice Baron had not taken sufficient account of the pre-nuptial agreement in making the award to the husband.

The three Court of Appeal judges (including two high profile judges with family law backgrounds) handed down judgment on 2 July 2009. They agreed with Ms Radmacher, and changed the basis of the award to the husband so that he should only have a house until the youngest child reached the age of 22 and the lump sum in lieu of maintenance for him should be calculated to extend only until that time as well (this meant that that sum was reduced to around £1m).

Effectively, the husband received a sum similar to what might have been expected had he and Ms Radmacher not been married at all but had had the two children outside marriage. The Court of Appeal judges placed great weight on the existence of the pre-nuptial agreement and the fact that the parties were French and German and would have expected to have been held to the agreement had the divorce not taken place in England, but instead in France or Germany.

In her judgment, the High Court judge had pointed to various factors which she said reduced the effect that the pre-nuptial agreement should have, such as the lack of independent legal advice and insufficient disclosure of the wife's assets. The Appeal Court judges looked at each of these factors but concluded that they did not mean that the weight of the agreement should be significantly reduced and held that the High Court judge did not appear to have made a sufficient reduction to the husband's award to take account of the presence of the pre-nuptial agreement.

THE STATUS OF PRE-NUPTIAL AGREEMENTS

Importantly, the Court of Appeal judges said that the time had come to recognise that, contrary to the usual position, the argument that pre-nuptial agreements were contrary to public policy (because they were said to undermine the status of marriage) was no longer really a valid one. While pre-nuptial agreements are not a complete defence to a spouse making an application for financial relief on divorce (and cannot be so until Parliament legislates on this issue) this judgment strengthens the already apparent trend towards greater account being taken of pre-nuptial agreements as one of the circumstances of the case, when the court makes a decision regarding financial relief on divorce.

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The Court of Appeal's decision was not entirely expected, so further change is possible. Mr Radmacher may take the case further to the House of Lords, or a similar case may go as far, which would provide further, welcome, clarity on the issue.

The government has recognised that there is a potential need for legal reform in this area and, consequently, the Law Commission is due to start a project later this year to examine the status and enforceability of agreements in this area, including pre-nuptial agreements. The report and draft Bill from the Law Commission is not expected, however, until late 2012.

The rapidly changing case law in the area of pre-nuptial agreements means that early and comprehensive expert advice needs to be taken by both parties to a potential pre-nuptial agreement on whether to enter into it and, if so, what its terms should be. It would be very dangerous both to assume, following the *Radmacher v Granatino* judgment, that one could rely on a pre-nuptial agreement to defeat or significantly reduce a claim for financial relief, particularly in circumstances where there has not been proper disclosure of each parties' assets or where one or both of the parties has not taken independent legal advice.

This article offers general guidance only. It reflects the law as at August 2009. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.

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