



Supreme Court finds in favour of Pre-Nuptial Contracts

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The Supreme Court has today handed down its long awaited judgment in *Radmacher v Granatino*. Couples who enter into Pre-Nups can now expect to be bound by them in the event of divorce.

There is now a presumption that a couple will be held to an agreement, even if it overrides the normal principles of sharing assets on divorce, provided that:

- (a) the agreement is entered into properly; and
- (b) it meets basic needs at the time of the breakdown of the marriage.

This is a radical shift in the law, as until now there has been real uncertainty about whether these agreements will be upheld. In anticipation of a change in the future, some couples have been entering into Pre-Nups over recent years, without knowing whether they would be binding or not. The Court's decision is likely to make them commonplace in future, particularly for those who have assets they wish to protect.

The Background Facts

Katrin Radmacher is a German multi-millionaire. In 1998 she married a Frenchman, Nicolas Granatino, when both were in their late 20s. Mr Granatino was at the time a banker but had nothing like the wealth of Ms Radmacher. Prior to their marriage, they signed a pre-marital agreement in Germany – as is commonplace in Europe. The agreement stated that, in the event of their divorce, Mr Granatino could not make any claims against Ms Radmacher's assets.

They had two children together, separated in 2006, and divorce proceedings were started in London.

At the first hearing in the case, Mr Granatino was awarded roughly £5 million, including a housing fund of £2.5 million. Ms Radmacher appealed on the grounds that this was too generous and that it went beyond the terms of the pre-marital agreement. In 2009 the Court of Appeal found in her favour and reduced the award substantially by providing for his needs only during the period of the children's dependency. Mr Granatino appealed that decision to the Supreme Court.

The case was heard by nine of the most senior judges in the country. Eight of the nine judges (whose views are binding) found in Ms Radmacher's favour and dismissed Mr Granatino's

appeal, thereby holding him to the award made by the Court of Appeal. The only dissenter was Baroness Hale - who was both the only woman and the only family lawyer on the panel.

New Principles

This is a ground-breaking judgment. It sets a precedent which all other courts must follow and in so doing provides guidance as to how such agreements will be considered under English law.

- 1 Pre-Nups cannot oust the power of the court to impose a different award, but there is now a clear presumption that, provided they are entered into properly and their effect would be fair, the parties must expect to be bound by their terms.
- 2 There is recognition of an individual's right to autonomy, giving respect to a couple's decision to regulate their financial affairs.
- 3 There is no longer a distinction to be drawn between Pre-Nups and Post-Nups (agreements entered into after marriage). The same principles apply to both. Couples who do not have a Pre-Nup could therefore enter into an agreement during their marriage - assuming they could agree what it should say.
- 4 To be considered as fair and upheld, the agreement must consider and provide for the welfare of any child, and meet the basic needs of the parties. Provided basic needs are met, couples can effectively contract out of the rules for sharing assets which a court may otherwise apply.
- 5 Agreements which aim to ring-fence inherited or pre-acquired assets and stop them being shared on divorce are likely to be upheld.
- 6 Agreements must be entered into by the parties of their own free will, without coercion or pressure, and they must both fully understand what they are signing. Legal advice on an agreement is strongly recommended, to show that understanding.

7 Disclosure of each party's financial position at the time of the agreement is also recommended.

Pre-Nups are still not 100% binding; the court retains power to review an agreement at the time of a divorce. There is also still uncertainty about how far a court would go in departing from an

agreement where there had been a radical change of circumstances since it was signed, particularly after a long marriage. However there is no doubt that this case heralds a significant social change in attitudes to marriage and divorce; the traditional English distaste for Pre-Nups is challenged by the Supreme Court's decision.

For further information please contact:



Catherine Hallam, Partner
0117 939 2245
catherine.hallam@burges-salmon.com



Ashley Palminteri, Senior Associate
0117 902 7761
ashley.palminteri@burges-salmon.com



Sarah Woodsford, Senior Associate
0117 902 7743
sarah.woodsford@burges-salmon.com



Thomas Boyce, Associate
0117 902 7710
thomas.boyce@burges-salmon.com

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