

Prenuptial agreements - are they now binding?

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Radmacher v Granatino – Supreme Court Judgment

The Supreme Court has upheld a Court of Appeal decision holding a French husband, Nicholas Granatino, to a prenuptial agreement which he signed prior to his marriage to German heiress, Katrin Radmacher.

Mr Granatino challenged the decision of the Court of Appeal, which significantly reduced the financial award he had received from the High Court. The Supreme Court has dismissed his appeal and clarified the law relating to pre and post-nuptial agreements.

Any suggestion that prenuptial agreements are not binding in England and Wales has been overturned as a result of the decision. The presumption is that they can now bind, unless unfair.

The Supreme Court has done away with the view that prenuptial agreements are contrary to public policy. All the circumstances of the case will be taken into account and the court retains its discretion to overrule the agreement if so inclined, although respect will now be given to individual autonomy. The Supreme Court emphasised that the key is 'fairness'. Each party should intend that the agreement should be effective; should be fully aware of the implications of entering into the agreement; should have all of the information material to his or her decision; and should intend that the prenuptial agreement should govern the financial consequences of the marriage ending.

When assessing whether the terms of a prenuptial agreement are unfair, the court will consider several key factors, including whether the needs of one spouse or the requirement for compensation for sacrifices made during the marriage justify a departure from the terms and whether the terms prejudice the reasonable requirements of any children of the family.

In this case, the Supreme Court decided the agreement was freely entered into and that both parties fully appreciated its implications. Accordingly, it was only right to depart from the agreement to the extent necessary to cater for the needs of the children.

The Supreme Court has endorsed the importance of prenuptial agreements in relation to the treatment of nonmatrimonial property such as inherited assets or assets owned by one party prior to the marriage. The court has suggested that the shorter the marriage, the more likely it is that the terms will be upheld in their entirety. The preservation of family assets and trusts is of utmost importance to many families. Those contemplating marriage where there are significant inherited assets or inheritance prospects at stake should consider having a pre-nuptial agreement, given the protection it will now afford in the event of divorce.

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