

## Private client news - winter edition: prenuptial agreements life after Radmacher

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The well known case of *Granatino v Radmacher* gave great weight to prenuptial agreements unless there are circumstances which dictate otherwise.

Independent legal advice and disclosure are key factors the Court should consider when deciding whether a party has entered into a marital agreement with a full appreciation of its implications. Since 2009 the Law Commission has been consulting on marital property agreements and a final report is due in January 2013.

*Granatino v Radmacher* made clear that independent legal advice and full disclosure were not preconditions to fairness, which underlies the English Court's overall approach to the treatment of marital agreements. The issue of non-disclosure of assets was considered in *Kremen v Agrest*, which concerned a postnuptial agreement between a wealthy Russian financier and his wife. In that case, material non-disclosure by the husband was highly influential in Mr Justice Mostyn's decision to disregard the agreement, as were the issues of a lack of independent advice and the presence of duress. These findings resulted in it being determined that the wife did not enter into the agreement with a full appreciation of its implications. The wife received an award of £12.5m out of total assets in the region of between £20m – £30m.

In contrast, in *Z v Z*, which concerned a French couple who entered into a French marriage contract in accordance with French law, the agreement was upheld by the English Court. This was despite a lack of independent legal advice and disclosure. Mr Justice Moor commented that this would have been a case for equal division of assets, were it not for the agreement. However, even though the wife did not know the full details of her husband's assets, Mr Justice Moor held that it was enough that 'she knew that he was doing well... and making ever greater amounts of money'. The Court held that, because of the existence of the agreement, the sharing principle should not apply but it generously assessed the wife's needs in formulating an award.

In the case of *V v V*, which concerned a premarital agreement between a Swedish wife and an Italian husband with assets of £1.3m in a short marriage, the Court found on appeal that although there had been no independent advice before they entered into the agreement, the parties were sufficiently intelligent to be 'aware of its obvious purpose, notwithstanding that [they] did not have advice concerning it, or its effect'. It was held that there was no material non-disclosure, as the wife was indifferent to the detailed value of the husband's assets. The Court recognised the importance of the principle of autonomy.

Whilst independent advice and disclosure are not preconditions to marital agreements being upheld, case law shows that since *Granatino v Radmacher*, the English Court has continued to take such factors and the factual matrix into account when deciding the weight to be attached to the agreement. It is likely that forthcoming reform to the current law on marital agreements will include provision for factors such as independent legal advice and disclosure to be conditions to enforceability. Wealthy individuals looking to protect wealth through marital agreements should therefore be aware that the absence or existence of key factors could, ultimately, have a significant impact on the treatment of the agreement.

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