

## Radmacher and Prenuptial agreements Two commentaries

*Andria Robertson, trainee solicitor, comments on the long-awaited judgment of Radmacher v Granatino, which dealt with prenuptial agreements.*

In Radmacher, the Supreme Court has finally confirmed that English courts will accord weight, "sometimes even decisive weight", to pre-nuptial agreements when ruling on financial settlements upon divorce.

The decision was cause for celebration for the German heiress who managed to protect her £100 million fortune from her French City-banker turned researcher ex-husband because he had signed a pre-nuptial agreement in Germany. The judgment is also a welcome development for all engaged couples wishing to protect wealth built up individually before marriage and reduce the uncertainty and legal costs involved in fighting over the finances in the worst-case scenario of a divorce.

The starting-point is now that pre-nuptial agreements will be given effect by the court if both parties freely entered into the agreement and have a full appreciation of its implications. Courts will not, however, give effect to them if, given the circumstances at the time of the agreement or at the time of the divorce, it would not be *fair* to hold the parties to their agreement.

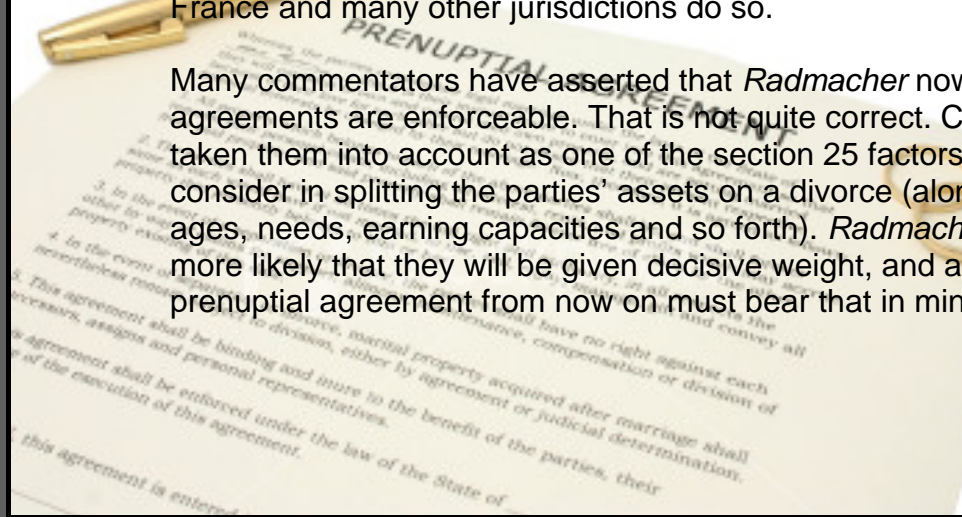
Unsurprisingly, Hollywood-style clauses about not straying and (thank goodness) being a good housewife are unlikely to be entertained by the English courts. That said, the story isn't quite over yet because the Law Commission is due to present its proposals for law reform in this area in 2012.

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*Polly Morgan, solicitor, with her views on Radmacher:-*

In Radmacher we have a German heiress and a French former banker who find themselves dealing with English law. English law has never provided for the automatic recognition of prenuptial agreements, whereas Germany, France and many other jurisdictions do so.

Many commentators have asserted that *Radmacher* now means prenuptial agreements are enforceable. That is not quite correct. Courts have previously taken them into account as one of the section 25 factors that they must consider in splitting the parties' assets on a divorce (along with the parties' ages, needs, earning capacities and so forth). *Radmacher* simply makes it more likely that they will be given decisive weight, and anyone entering into a prenuptial agreement from now on must bear that in mind.



However, the courts will not give prenuptial agreements decisive weight if the agreement is tainted and thus in some way unfair. Tainting aspects include

- undue pressure being exerted on one party to enter into the agreement;
- non-disclosure of *material* (relevant) information;
- the agreement not meeting the reasonable requirements of the children of the family

and to a lesser extent:

- the agreement not enabling one party to meet his or her needs;
- if it is unfair that the agreement doesn't compensate one party for sacrifices made for the marriage; or
- if fairness demands that assets built up by joint efforts should be shared.

These criteria are of varying weight, with the top three criteria appearing to be the more important. What account the courts are likely to take of the bottom three criteria is, I suggest, likely to be affected by arguments about individual autonomy and people's general right to enter into contracts as they see fit.

In *Radmacher*, Mr Granatino did not have the detail of his wife's wealth, but knew that she was very wealthy and the court considered that this was all that it was material for him to know. He was not compensated for loss of earnings as a result of his change of career, because not only did he have good financial prospects in that new career, but he decided to switch careers not because of family need but of his own preference. Finally, the wife's wealth was all inherited and not the result of marital effort. This meant that none of the above factors applied.

Despite the fact that the court considered the prenuptial agreement to be of decisive weight and not unfair, Mr Granatino did get more generous provision than that required by the prenuptial agreement. This is because the agreement did not adequately provide for his needs as a parent. Parents have obligations to provide for their children and that is irrespective of any obligation to support the parent with whom the child lives (although that may well be the side effect).

Mrs Radmacher was obliged to provide maintenance and the loan of a house for Mr Gratiano to live in when he saw the children. The house was to be returned to Mrs Radmacher on the youngest child reaching the age of 22 because at that point Mr Granatino would no longer have a need in his capacity as a parent.

If you are planning on getting married but want maximum protection for family businesses and inheritances, contact the family team, which comprises Rosalyn Thickett, Polly Morgan, Laura Savage and Andria Robertson on 01603 610911 or [rthickett@leathesprior.co.uk](mailto:rthickett@leathesprior.co.uk) or [pmorgan@leathesprior.co.uk](mailto:pmorgan@leathesprior.co.uk).