

# Prenuptial Agreements

## By Asha Sumputh of Glazer Delmar Solicitors

Prenuptial agreements used to be the preserve of the rich and famous. In the UK they were not enforceable, but following the landmark case of *Radmacher v Granatino* in October 2010, all this is starting to change, they are now becoming more accepted by the courts and ordinary people alike.

Society has changed, and people's needs have too. The decision of the Supreme Court in *Radmacher v Granatino* was the end of a 4 year long legal battle between the parties. The wife, Radmacher, was a very wealthy heiress and she insisted on a prenuptial (pre nup) agreement stating that neither of them would have any claim on the other's assets during their marriage, or if they separated.

The husband, Granatino, a banker decided to change career and do academic research, declined to take any legal advice before he signed the prenup. After eight years and two children, the couple split up. In spite of the prenuptial agreement, the husband went to court and was awarded £5.5m, mainly because he hadn't taken independent legal advice before he signed it.

The wife appealed and the Court of Appeal agreed that insufficient weight had been given to the existence of the pre-nuptial agreement. The husband's award was reduced from £5.5 million to £2.5 million, but the money should be held by him only during the years of parenting, with maintenance to continue only until the children were 22 years old. The husband subsequently appealed the decision to the Supreme Court. His appeal was by a majority of 8 to one, finding that the Court of Appeal had been correct to conclude that there were no factors which rendered it unfair to hold the husband to the agreement.

The Supreme Court have confirmed that the English courts will be ready to attribute appropriate weight ( as to the circumstances of each cases )to a pre or post-nuptial agreement or matrimonial property regime when having regard to all of the circumstances of the case. The existence of such an agreement will be



one of the factors; perhaps the most compelling factor, in deciding how to divide a couple's assets upon divorce.

For a prenup to be recognised by the courts, both parties must enter into it of their own free will, without undue influence or pressure, informed of its implications.

It is also important that each party should have all of the information that is material to a decision about whether to enter into the agreement and enter into it with the intention that the agreement should govern what will happen to the assets in the event that the marriage breaks down. It is further important that the document is properly drafted and witnessed.

With the judgement in *Radmacher v Granatino*, it looks like prenuptial agreements are here to stay.

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