

Will the Supreme Court support an important tool in the wealth protection toolbox?

- The decision of the Supreme Court in the important pre-marital agreement case of *Radmacher v Granatino* is expected in the next few weeks.
- This judgment will have far reaching implications for not only those divorcing, but also those who wish to protect their wealth from the possibility of divorce at some point in the future.

Background- the story so far...

Ms Rachmacher (a German) and Mr Granatino (a Frenchman) had been married for eight years and had two children. Following their separation, the children spent about two thirds of their time with their mother in Germany and about a third with their father in England. The mother is a wealthy heiress, said to be worth around £100 million. The father had been an investment banker in London, earning several hundreds of thousands of pounds at its peak, but he decided to give it all up to become an academic in Oxford, earning approximately £30,000 per annum.

The parties signed a Pre- Marital agreement (PMA) in Germany a few months before they were married. It contained no financial disclosure, it was not translated (and the husband does not speak German) and the husband only had the advice of a notary (and not therefore his own independent advice) on the document..

On their divorce, the High Court awarded Mr Granatino just over £5 million, about half of which was for a housing fund for property in London and the other half by way of capitalised maintenance. The Court of Appeal cut down his award so that the husband only received the housing fund and income “in his capacity as a father” which meant that the housing fund was to be returned to the wife when the youngest child reached the age of 22, and with him receiving a reduced capitalised maintenance sum, based on a calculation not for the rest of the husband’s life, but again only until the youngest child was twenty two.

The Supreme Court heard the appeal in March, but we are still waiting for the judgment. The case was heard by nine Supreme Court judges, which is the highest number of judges possible to hear such a case. Given the number of judges we are expecting a weighty judgement and have concerns that there could be a lack of clarity about the decision, given the number of fingers in pies!

Issues the Supreme Court will have to address:

- On the basis of the facts in this case, should the husband receive the money in his own right (as the High Court had ordered) or only in his capacity as a father, with funds being returned to the wife when their youngest child is twenty two?

- Have we got beyond the old law whereby PMAs were void on grounds of public policy?
- Although PMAs have long been regarded as one of the circumstances of the case that a court has to have regard to, have we now got to the stage where they are in fact “presumptively dispositive”, unless there are obvious concerns about duress etc?
- What, if any, safeguards should be in place if PMAs are to carry more weight? (eg, independent legal advice? Financial disclosure? How long should they be signed before a marriage?)
- Can the judiciary, in effect, choose to make PMAs binding, save in certain circumstances, or, as the Court of Appeal has indicated, do we need statute to do this?
- Will the Supreme Court take the opportunity to comment on the status of post-marital agreements, which had in effect been held to be binding (subject to the possibility of variation in certain circumstances) in the case of *MacLeod* in 2008.

The use of pre and post-marital agreements as a method of wealth protection has always been a possibility, but has come to the fore in the last couple of years since the Court of Appeal’s decision in *Radmacher* and the Privy Council’s decision in *MacLeod* (post-marital agreements). Certainly across the six offices of Mills & Reeve, we have found we have advised on more pre and post-marital agreements over the last two years than we have done in the previous ten.

We are concerned that the decision of the Supreme Court may not necessarily strengthen the status of PMAs (and post-marital agreements) but leave matters in the balance, pending further legislation, which may be on the cards following the recommendations of the Law Commission who are due to produce a consultation paper in January 2011.

We will of course let you know the outcome of the decision and its implications in full once we receive it from the Supreme Court. In the meantime if you have any queries about these or other matters, please do not hesitate to contact Marc Saunderson on 0121 456 8390.



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