

Private Client

Irish Prenuptial Agreements in the wake of Radmacher -v- Granatino [2010] UKSC 42

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What is a Prenuptial Agreement? A prenuptial agreement is an agreement or contract entered into between two individuals that intend to marry setting out how the assets of the couple will be divided between the parties should the marriage subsequently come to an end. These agreements are usually made in order protect the assets that each party brings with them to the marriage or as an attempt to avoid protracted divorce proceedings to determine the division of assets owned prior to the marriage and those assets acquired during the marriage.

The Radmacher -v- Granatino Decision

Prior to the Radmacher case, English case law indicated that a prenuptial agreement was only one of a number of factors which were to be considered when making an award on the granting of a divorce.

The English Supreme Court decision of Radmacher addresses the impact of a German premarital agreement in the context of an English divorce. In this particular case a German heiress and her French husband had entered into a prenuptial agreement in Germany setting out the details of the distribution of their assets in any future divorce. The couple subsequently sought to divorce through the English courts. It is important to note that even though the husband in the case did not take independent legal advice, see a translated version of the agreement or indeed have formal information about the levels of his wife's wealth at the time, the prenuptial agreement was still held to be relevant in deciding the division of assets between the couple. The Supreme Court appeared to move away from the earlier Court of Appeal decision in the same case that placed particular emphasis on the foreign dimensions of this case and in a 8-1 judgement the English Supreme Court stated that prenuptial agreements freely entered into by both parties with a full appreciation of the prevailing circumstances should be given full effect save where it would not be fair to do so. As a proviso the court did indicate that the longer the marriage the more likely it may be held to be unfair to hold the parties to their agreement

While stopping short of making prenuptial agreements absolutely binding it does clarify the ability of an English judge to enforce a prenuptial agreement provided that it would not be unfair to do so.

Implications for Ireland

When determining what awards to make in relation to the division of assets on a judicial separation or a divorce the Irish Courts are bound by the requirement that they make "proper provision for both spouses" out of the assets of the couple. This requirement arises out of the special protection afforded to the institution of marriage by the Irish Constitution.

There is no Irish legislation preventing parties from entering into a prenuptial agreement, however as had been the position in England and Wales prior to the Radmacher case the courts are not obliged to

consider same, and the agreement may be only one of a multiple of factors to be taken into consideration when adjudicating upon proper provision for the applicant spouses.

In matrimonial applications under the Family Law Act 1995 and the Family Law (Divorce) Act 1996, when determining what awards or orders to make the court must consider "all the circumstances of the case" including "the conduct of each of the spouses, if that conduct is such that in the opinion of the court it would in all the circumstances of the cases be unjust to disregard it". While the parties cannot oust the zenith replica watches jurisdiction of the court, the court may give appropriate weight to such an agreement where it considers just in the circumstances.

It should be borne in mind that the Radmacher case is not legally binding on the courts in Ireland but rather would be considered as persuasive in arguing the case for the recognition of prenuptial agreements in Ireland. There is no guarantee that a prenuptial agreement will be enforced by an Irish court but there is now a stronger argument for demanding that it be taken into consideration under the above mentioned legislation.

In considering such an agreement, the importance of independent legal advice and full disclosure cannot be emphasised enough. Although prenuptial agreements cannot be viewed as binding, they are now more likely to be given weight in the absence of fraud, misrepresentation or undue influence. General contract principles should be adhered to and the agreement should be executed within a reasonable time before the marriage so no element of pressure can be claimed by a spouse replica watches attempting to challenge such an agreement. A full schedule of assets should be attached and updated when necessary.

Even where prenuptial agreements are given legal recognition, they may still be deemed unenforceable if the Irish court feels proper provision has not been made under the terms of the prenuptial agreement. Where a prenuptial agreement is viewed as unfair or there is an obvious disparity of bargaining positions between the parties, the terms of the agreement may not be considered in any length. As the court will determine proper provision at the date of matrimonial hearing, it would be prudent to update the prenuptial agreement to reflect the current state of the couple's assets and a review of the agreement every few years is recommended.

For further information, or to prepare a Prenuptial Agreement, contact Mary McKeever of our Private Client Department.

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