Radmacher v Granatino: judicial status of pre-marriage agreements

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Abstract

The Court of Appeal decision in Radmacher v Granatino (2009) EWCA Civ 649 (2 July 2009) is likely to be strongly determinative of the future judicial treatment of premarital and other marital and similar domestic relationship agreements. Until there can be Parliamentary intervention, perhaps as a consequence of the forthcoming Law Commission investigation or other recommendations, this case will materially influence judges and practitioners in the weight to be given to marital agreements. The three judgments look not just to the narrow issues in the particular case but at the future for this area of developing law and social policy.

Whilst like most Court of Appeal ancillary relief decisions it relates to big money and relatively narrow facts, unlikely often to be repeated, in this instance the Court of Appeal has handed down a judgment to provide wider guidance. Moreover whilst the case itself concerned a pre-marriage agreement in the international dimension, the remarks by the judges were equally directed to purely national couples and agreements entered into in this country.

At paragraph 53 of the judgment Lord Justice Thorpe made the following statement: “in future cases broadly in line with the present case on the facts, the judge should give due weight to the marital property regime into which the parties freely entered. This is not to apply foreign law, nor is it to give effect to a contract foreign to English tradition. It is, in my judgment, a legitimate exercise of the very wide discretion that is conferred on the judges to achieve fairness between the parties to the ancillary relief proceedings.”

By reference to marital property regime in the international context there should also be construed the marital agreement regime in the national context i.e. what the parties agreed before and during the marriage in substitution for what might be the outcome of an adjudicated settlement at court on divorce.

This takes the law further towards support for marital agreements than even the observations in Crossley (2007) EWCA Civ 1491 in which the agreement was referred to as of “magnetic” and “paramount importance”.
This article looks at the case and the present direction given to the law in the judgements along with good practice

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