



20 October 2010

## PRESS SUMMARY

### **Radmacher (formerly Granatino) (Respondent) v Granatino (Appellant) [2010] UKSC 42** *On appeal from the Court of Appeal [2009] EWCA Civ 649*

**JUSTICES:** Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lady Hale, Lord Brown, Lord Mance, Lord Collins and Lord Kerr

### **BACKGROUND TO THE APPEAL**

This appeal concerns the principles to be applied when a court, in considering the financial arrangements following the breakdown of a marriage, has to decide what weight should be given to an agreement between the husband and wife made before the marriage (an ‘ante-nuptial agreement’, often referred to as a ‘pre-nuptial’ agreement).

The appellant and respondent were married in London in 1998. The husband is French and the wife German. They entered into an ante-nuptial agreement before a notary in Germany three months before the marriage at the instigation of the wife, to whom a further portion of her family’s considerable wealth would be transferred if an agreement was signed. The agreement was subject to German law and provided that neither party was to acquire any benefit from the property of the other during the marriage or on its termination. The husband, who at the time worked as a banker, declined the opportunity to take independent advice on the agreement.

The parties separated in October 2006 after 8 years of marriage. They have two daughters, born in 1999 and 2002. By this time the husband had left banking and had embarked on research studies at Oxford.

The husband applied to the court for financial relief. In the High Court he was granted a sum in excess of £5.5m which would afford him an annual income of £100,000 for life and allow him to buy a home in London where his children could visit him. The judge took into account the existence of the ante-nuptial agreement but reduced the weight she attached to it because of the circumstances in which it was signed. The wife appealed successfully to the Court of Appeal, which held that in this case the agreement should have been given decisive weight. The husband should only be granted provision for his role as the father of the two children and not for his own long term needs. The husband appealed to the Supreme Court.

### **JUDGMENT**

The Supreme Court (by a majority of 8 to 1) dismisses the appeal. The substantive judgment is given by Lord Phillips (President), with an additional judgment from Lord Mance. Lady Hale gives a dissenting judgment.

## REASONS FOR THE JUDGMENT

Lord Phillips observed that it used to be contrary to public policy for a couple who were married or about to be married to make an agreement which provided for the contingency that they were about to separate, on the basis that this might encourage them to do so, and the court paid no regard to them [31]. After 1957 separation agreements were given considerable weight, as increasingly were post-nuptial agreements, in marked distinction to the treatment of ante-nuptial agreements [42]. But the reasons for sweeping away the old rule for separation agreements applied equally to ante-nuptial agreements [52]. There was not necessarily a material difference between the two [57] and the court was entitled to overrule the agreement in either case [63]. The question was how the court should approach the task of deciding what weight should be given to an ante-nuptial agreement.

Three issues arose in relation to the agreement in this case for the court to consider:

- (i) *Were there circumstances attending the making of the agreement which should detract from the weight which should be accorded to it?* Parties must enter into an ante-nuptial agreement voluntarily, without undue pressure and be informed of its implications. The question is whether there is any material lack of disclosure, information or advice [69].
- (ii) *Did the foreign elements of the case enhance the weight that should be accorded to the agreement?* In 1998, when this agreement was signed, the fact that it was binding under German law was relevant to the question of whether the parties intended the agreement to be effective, at a time when it would not have been recognised in the English courts. After this judgment it will be natural to infer that parties entering into agreements governed by English law will intend that effect be given to them [74].
- (iii) *Did the circumstances prevailing at the time the court made its order make it fair or just to depart from the agreement?* An ante-nuptial agreement may make provisions that conflict with what a court would otherwise consider to be fair. The principle, however, to be applied is that a court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless, in the circumstances prevailing, it would not be fair to hold the parties to their agreement [75]. A nuptial agreement cannot be allowed to prejudice the reasonable requirements of any children of the family [77], but respect should be given to individual autonomy [78] and to the reasonable desire to make provision for existing property [79]. In the right case an ante-nuptial agreement can have decisive or compelling weight [83].

Applying these principles to the facts, the Court of Appeal was correct to conclude that there were no factors which rendered it unfair to hold the husband to the agreement. He is extremely able and his own needs will in large measure be indirectly met from the generous relief given to cater for the needs of his two daughters until the younger reaches the age of 22 [120]. There is no compensation factor as the husband's decision to abandon his career in the city was not motivated by the demands of his family but reflected his own preference [121]. Fairness did not entitle him to a portion of his wife's wealth, received from her family independently of the marriage, when he had agreed he should not be so entitled when he married her [122].

Lord Mance agreed with the conclusion of the majority but, in common with Lady Hale, expressed no view on the binding or other nature of an ante-nuptial agreement, which did not arise for decision.

Lady Hale (dissenting) stated that modern marriage still possesses an irreducible minimum, which includes a couple's mutual duty to support one another and their children. The issue in this case was how far individuals should be free to rewrite that essential feature of the marital relationship as they chose [132]. The law of marital agreements is in a mess and ripe for systematic review and reform. The Law Commission has a current project to examine the status and enforceability of agreements and

can then make detailed proposals for legislative reform that Parliament can consider. That is the democratic way of achieving comprehensive and principled reform [135]. The facts of this particular case obscure the fact that the object of an ante-nuptial agreement is to deny the economically weaker spouse (usually the wife) the provision to which she would otherwise be entitled [137].

The points on which Lady Hale dissents from the majority are summarised at [138] and include the upholding of the Court of Appeal's decision as to the actual outcome of the case. In her view, there remain important policy considerations justifying a different approach for agreements made before and after a marriage [162]. The test to be applied by the court when considering an ante-nuptial agreement should not introduce a presumption or starting point in favour of holding the parties to it: the guiding principle should be fairness in the light of the actual and foreseeable circumstances at the time when the court comes to make its order [169]. In this case the Court of Appeal appeared wrongly to treat the parties as if they had never married but only cohabited, and failed to recognise that a parent often expects to continue to be a resource for his or her grown-up children [192]. Lady Hale would have varied the judge's award to give greater weight to the agreement but would have granted the husband his English home for life [194].

*References in square brackets are to paragraph numbers in the judgment.*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgements are public documents and are available at: [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**