

# I LOVE YOU FOREVER. NOW JUST SIGN HERE...

High-profile divorce settlements such as that won by Heather Mills against Paul McCartney have seen pre-nuptial agreements soar. By **RICHARD POWELL**

**THIS SUMMER, A** groundbreaking judgment by the Court of Appeal allied itself with a view long-held by the rest of the legal world: that married couples should be able to organise their own financial affairs in the event of a divorce.

Lawyers have, for over 150 years in England, pushed and prodded its archaic legal system in a bid to stop their high net worth clients being taken to the cleaners by spouses who arrive with little capital and attempt to leave with a lot.

Recent cases have been well-reported: Sir Paul McCartney, hit with a £24m settlement after four years' marriage to Heather Mills; New Star fund manager Alan Miller ordered to pay his former wife £5m after a childless two-year long marriage; Deloitte partner Kenneth McFarlane losing the family house and a third of his annual £750k salary every year for the rest of his life to his wife, and in 2006, Lloyds insurance tycoon John Charman's wife Beverly, awarded a £48m payout in Britain's largest-ever contested divorce settlement.

However, it was a battle between two foreign nationals living in London, who had signed a pre-nuptial agreement – where the moneyed party was the wife – that has completely turned the notion of London as the divorce capital of the world on its head.

French-born banker Nicholas Granatino and the German heiress Katrin Radmacher, said to be worth £100m, married in 1998. At the time, Radmacher ran a boutique in Beauchamp Place, and Granatino worked for JP Morgan where

at the height of his career he was earning around £325k a year.

Prior to their marriage, the parties signed a German-style pre-nuptial agreement which barred Granatino's financial claims against his wife.

On their divorce in the High Court, Mrs Justice Baron considered that Granatino's award should be "circumscribed to a degree" to reflect the fact that he had signed a marriage contract. He was awarded £2.5m for a home, £700k to pay off his debts and £2.3m which he could draw on for the rest of his life to provide him with an income. Radmacher was also ordered to pay her former husband £25k for a new car and fund the costs of a furnished house in Germany for her former husband, to enable him to visit their children at the weekends.

But at the Court of Appeal, judges considered that the position of pre-nups being void in England for public policy reasons was at best questionable in modern times, particularly in a case ▶

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**The view of London as the world's divorce capital is now out of date**



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## Judges said pre-nups can and, in the right case, should be taken into account

► involving international parties where the type of agreement they had entered into was commonplace and binding in their respective homelands. They said that legislative change will have to await the review of a pending Law Commission but in the meantime the Matrimonial Causes Act required nothing to be ruled out and nothing to be ruled in when deciding who gets what on divorce. As such, they said, pre-nups can and, in the right case, should be taken into account.

They reduced Mr Granatino's award by holding that the house Mrs Radmacher must provide to him as father to their children should revert to her once their youngest daughter turns 22, in 15 years, and that the £2.3m lump sum he had been given to provide him with an income for life should be reduced to provide him with an income for 15 years, when his financial responsibilities in providing for his daughters as a homemaker will come to an end.

Ayesha Vardag, the top London divorce lawyer who saw off Granatino's formidable legal team – Fiona Shackleton and Nicholas Mostyn QC – and won the appeal for Katrin Radmacher along with Richard Todd QC, said: "For 160 years pre-nuptial contracts were said to be void for public policy reasons. They were

put in the same category as contracts to kill your hated spouse. Now, in a landmark judgment, three of the most highly-respected judges in the land ruled that pre-nups can be decisive in determining the financial division on divorce.

"[The judge] praised two modern

principles: first, that there should be due respect for adult autonomy – responsible adults should be allowed to decide the financial fate of their marriage themselves without excessive interference from a nanny state; and second, that the old public policy argument reflects the laws and morals of earlier generations.

"The Court of Appeal has enabled English matrimonial law to catch up with the rest of the world so that grown-ups can agree in the best of times what will happen in the worst of times," she added.

The trailblazing lawyer, whose firm Ayesha Vardag Solicitors works at the cutting edge of family law, said that responsible adults, often coming into second and third marriages, want to be able to organise their affairs in a way that protects their hard-won security in life and that of their children.

"Marriage is a legal status with significant financial implications. If we are free to contract in other areas of our lives, why not in this?" Vardag asks.

The law on division of financial assets used to ensure only that the 'reasonable needs' of the financially weaker party – usually the wife – were met as a result of the settlement. But the situation changed in 2000, when Pamela White, a former farmer's wife who had worked in the family business and felt she was entitled to half the farm as a result, took her case to the House of Lords.

It decided that where there were assets that were in excess of both parties' needs, it was wrong to limit a wife leaving a long marriage to provision for her 'reasonable needs'.

To guard against the courts applying their varying interpretations of this, lawyers say the moneyed party in a relationship should strongly consider a pre-nup prior to entering into what is the most important contract of their lives, as a form of insurance that they will hopefully never need.

When pop star Britney Spears divorced husband Kevin Federline in the US in 2006, he received just \$1m dollars from her estate, estimated to be worth between \$50m and \$100m. Spears had insisted that her husband-to-be sign an iron-clad pre-nuptial agreement running to a reported

65 pages, while back in Britain, Sir Paul McCartney apparently declined to ask his belle Heather Mills to sign one on the grounds that it was unromantic – and look what happened to him.

More recent is the case of pre-nup free comedy legend John Cleese, married to third wife Alyce for 15 years. She lived in a council flat when they met. There are no dependent children. Yet she was awarded £8 million in cash and assets plus more than £600k annually for the next seven years by a California court in August ... leaving her wealthier than him. "What I find so unfair is that if we both died today, her children would get much more than mine," Cleese said.

"Should've got a pre-nup" say lawyers. Cleese's final words on divorce day?

"I got off lightly. Think what I'd have had to pay Alyce if she'd contributed anything to the relationship." ■

### PRE-NUPS & DOWNS...

- A pre-nuptial agreement is a written deed signed between couples before they get married that sets out how their assets and liabilities should be treated if the marriage fails. In drawing one up, both parties come to the table and lay out their assets, debts and incomes.
- For courts to respect pre-nups in their entirety they ordinarily should meet the criteria that defines all contracts between people in close relationships; these include both parties understanding the agreement, no undue pressure to sign, consideration being given to child provision and the opportunity to take legal advice.
- According to accountants Grant Thornton, most English lawyers now back legally binding pre-nups. They recently reported that demand for pre- and post-nuptial agreements soared last year, with three-quarters of English family lawyers saying they are drawing more up.
- The Law Commission's investigation into the future validity and effect of pre-nups is due to commence towards the end of the year, with a report and draft Bill expected in late 2012.