



## More power to the Pre-Nup.

A recent Court of Appeal case has really increased the desirability of having a well drawn Pre-Nuptial Agreement.

The Court of Appeal said that the very experienced Family Judge who originally dealt with the case had not given anything like sufficient weight to the existence of the Pre-Nuptial Agreement in the case and, substantially reduced the award that she had made.

Slightly unusually the spouse with the wealth to protect was the wife in this case. Her family had, sensibly, as it turned out, threatened to disinherit her if she proceeded with her marriage without a Pre-Nuptial Agreement in place.

She was a German heiress and he was a French citizen pursuing a successful career as an investment banker with J P Morgan.

By the time of the marriage breakdown however, he was pursuing an academic career and his earnings were only around 10% of his peak remuneration as a banker. The Judge gave the husband a little over £5.500m and this was reduced primarily by providing that the biggest part of the fund (£2.5m) which was to provide a home for the husband and the children, would once the children ceased to be dependent, go back to the wife, and that the husband's maintenance entitlement would cease once the children ceased to be dependent also.

This was all despite the fact that there were a number of flaws in the Agreement. The husband had had no independent legal advice (although he was an experienced banker and perhaps felt able to look after himself). The Agreement purported to give him no entitlement at all. There was no full and frank disclosure of the wife's assets and perhaps most seriously, the Agreement did not allow any claims even in relation to children.

In the writer's view the Court of Appeal may well have been affected by the fact that both parties were Foreign Nationals and that under both French and German law the Pre-Nuptial Agreement would have been contractually binding. The point about the children was that the Court nonetheless made an Order, as they could do under the Children Act in relation to any, even unmarried parents. However, all in all, the case is a real shot in the arm for the Pre-Nuptial Agreement and, if a seriously flawed Agreement can achieve the outcome set out above, a properly drawn Agreement tailored to the circumstances of the parties more directly, may actually succeed in being followed in terms of what is actually awarded.

For assistance in drafting an agreement contact Mike Spencer at Actons on 0115 9 100 200 or email [family@actons.co.uk](mailto:family@actons.co.uk)



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