Neutral Citation Number: [2019] EWHC 2816 (Fam)

Case No: QB2019-000813

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/10/2019

Before :

MR JUSTICE COHEN

- -

Between :

FRB	**Claimant**
- and -	
DCA	**Defendant**

- -
- -

Jeffrey Gruder QC and Jackie McArthur (instructed by **Vardags**) for the **Claimant husband**
Justin Rushbrooke QC and Thomas Munby (instructed by **Payne Hicks Beach**) for the **Defendant wife**

Hearing dates: 7th, 8th October 2019

- -

Judgment Approved

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

See also Costs at the foot of this judgment.

The Honourable Mr Justice Cohen :

1. I have been hearing an application by the defendant wife (whom I shall call W) to strike out the claimant husband's (H) claim for damages to be assessed in respect of W's deceit. The parties to these proceedings are respectively the same husband and wife as in the proceedings AB v CD (No.1 and No.2) in which I have given judgments.

2. This judgment is being given in public as it deals purely with points of law. Nothing may be published that identifies the parties or the child, and the documents filed in respect of the proceedings and the application before me are not permitted to be opened or inspected by anyone other than the parties to the litigation.

3. **Background**

   The parties were married in 2003 and C was born a number of years later. They separated in early 2017 and thereafter W petitioned for divorce and H issued financial remedy proceedings by way of a Form A. Those proceedings have been hotly contested and are currently listed for final hearing before me with a time estimate of 15-20 days.

4. H issued separate proceedings against W in the Chancery Division in respect of an unrelated matter. Those proceedings have been struck out as disclosing no reasonable grounds for pursuing the relief sought and as an abuse of process.

5. In December 2018 C at H's instigation was subject to a DNA test. That test revealed that H was not C's biological father. A second test confirmed the first result.

6. H almost immediately threatened to invoke "conduct" in the financial remedy proceedings and a claim in the tort of deceit. His present claim was issued in the Queen's Bench Division on 8th March 2019. In his claim H sets out the many representations that he says that W made to him that C was his child when (as he alleges) she knew or suspected that in fact he was not C's father.

7. On 11th April 2019 Master Cook in the QBD transferred the proceedings to the Family Division and raised the question in advance of hearing submissions of "what this action can achieve given the remedies sought and the nature of the proceedings already underway in the Family Division. This is arguably pointless and futile litigation". At the hearing he directed W to serve either a defence to the claim or an application to strike it out. It is her application to strike out the claim that I have been hearing.

8. **Particulars of claim**

   The particulars of claim set out the various matters which H relies upon to constitute fraudulent misrepresentations by W that he was the father of C. It is unnecessary for me to set out any of those matters. Mr Rushbrooke QC, who appears with Mr Munby

on behalf of W, accepts that if the representations were found to be made and were known to be untrue by W then they could amount to a fraudulent representation, albeit not actionable for reasons to which I will come. For the purposes of this application I have to assume that H can prove the ingredients of fraudulent misrepresentation on which he relies although it is important that I record that W denies them.

9. H says that by reason of W's deceit he has suffered loss and damage and the particulars of damage as originally pleaded were as follows:

   i) "The difference between any financial provision payable by the claimant to the defendant in these divorce proceedings from [the date they were commenced] compared with any financial provision payable by the claimant to the defendant in divorce proceedings which would have been commenced [at the time of C's birth] by the claimant";

   ii) "All sums paid by the claimant in respect of the education and upbringing of C from his birth to date";

   iii) "(a) All sums paid by the claimant to the defendant in respect of her living expenses, and (b) the value of all gifts given by the claimant to the defendant [from the discovery of the pregnancy until the present divorce proceedings commenced]".

10. Paragraph (ii) of the particulars of loss and damage was removed by amendment in late July 2019 by H following his decision, after a considerable period of reflection, that he wished to continue to be C's psychological father. He accepted that in those circumstances his claim for restitution of the money spent by him on C could not survive.

11. **<u>Issues</u>**

    The issues before me are as follows:

   i) Does the tort of deceit in respect of intimate matters (in this case so-called "paternity fraud") exist between husband and wife?

   ii) If it does exist, can it run as a separate cause of action in parallel with financial remedy proceedings or is it an abuse of the court's process and/or otherwise likely to obstruct the just disposal of those proceedings?

       If the answer to either question 1 or question 2 is in the negative the claim may be struck out. However, says Mr Gruder QC, who appears with Ms McArthur on behalf of H, I can only strike out the proceedings in a case where the law is clear and established. If the case is complex or raises novel points of law, as H says it is and does, I should let the claim continue and determine it when I have heard all the evidence in the hearing listed to commence in January 2020.

12. The two issues need logically to be answered in the order in which I have set them out but Mr Rushbrooke, rightly, placed greater emphasis on the second issue.

13. I have summarised briefly the issues before me. That does not do full justice to the considered and erudite submissions made on both sides. I have been provided with

two bundles comprising over 50 authorities and extracts from legal journals and statutory material. It is necessary to refer to but few of them, but the parties can be assured that I have read and considered every extract to which I have been referred.

14. **The tort of deceit**

Prior to the Law Reform (Husband and Wife) Act 1962 actions in tort between husband and wife were not permitted. Since 1962 there have been many such actions, most commonly in my experience, arising from negligence, in particular when one spouse has been injured by the careless driving of the other. Actions for the tort of deceit arise but rarely and in particular paternity fraud cases are few and far between. Indeed, the first reported action was not until 2000 and arose between two former unmarried cohabitees. The researches of counsel have revealed there has never been reported such a claim in the High Court between husband and wife.

15. There is clear authority that paternity fraud applies to unmarried couples. The leading cases are *P v B (Paternity: Damages for Deceit*) [2001] 1 FLR 1041, a decision of Mr Justice Stanley Burnton (as he then was) and *A v B (Damages: Paternity)* [2007] 2 FLR 1051, a decision of Sir John Blofeld. In each case the man alleged that he had been fraudulently deceived by the mother, with whom he was in a relationship, that he was the father of the child. In each case the court had to consider whether the tort of deceit applied to domestic relations.

16. In the former case the judge decided that the tort of deceit did apply to a co-habiting couple. Mr Justice Stanley Burnton "unhesitatingly" decided that liability in deceit in a domestic context "i.e. as between a co-habiting couple" applied. At paragraph 26 he said this:

> *I see no reason why a confidence trickster who obtains money or other property from a woman by lying to her and living with her, possibly for a short period, should be outside the scope of liability in tort; and the same must apply to a woman who fraudulently deceives a man in order to obtain his money or property. (This is not to say that this is such a case: whether it is or not is to be determined at trial). <u>The law should encourage honesty between cohabiting couples rather than condone dishonesty</u>* (emphasis added).

17. And at paragraph 28

> *Liability for deliberately made dishonest statements intended to mislead is very different. It is a tort of intention rather than one of negligence. For the tort of deceit not to apply as between cohabiting partners would be anomalous.*

18. The reasoning is expanded upon at paragraphs 31-34. It is unnecessary for me to quote those paragraphs in full, but at paragraph 33 the judge drew a distinction between married and unmarried couples, pointing out that a husband who paid maintenance under a misapprehension as to the paternity of a child could apply under section 25 (4) of the Matrimonial Causes Act 1973 to vary or revoke an order for maintenance made against him and he continued "*however, these considerations do not apply where the parties are not married, and it is not discriminatory for the procedures and remedies available to unmarried couples within this court to differ*

from those available to married couples by reason of the remedies available to the parties in matrimonial proceedings".

19. The judge went on to say that the law should not prevent a remedy from being available in cases where it is needed.

20. It is clear from what I have quoted that the judge drew a distinction between married and unmarried couples and I reject Mr Gruder's submission that the passage at paragraph 8 of the judgment reading

> "*For the purposes of this judgment, however, I shall assume that the domestic arrangements to which paragraph 1A of the amended defence refers are restricted to marriage and cohabitation: that is sufficient for the purposes of this case. The essential question is whether the tort of deceit applies as between a cohabiting couple"*

shows that the judge's ruling is meant to apply to married couples as well as unmarried. That seems to me untenable in the light of the rest of the judgment.

21. It is important to note the limitations of that case. In particular, the judge made it clear that having decided the preliminary issue in favour of the claimant it did not follow that any of the special damages he claimed were recoverable, even if liability for deceit was established at trial.

22. *A v B* was a similar case but the judge also in that case had to assess damages. He found *McFarlane and Another v Tayside Health Board* [2000] 2 AC 59 was binding authority upon him that damages for the financial costs of bringing up and caring for a child and living expenses cannot be awarded. Mr Gruder says that the judge was wrong to do so.

23. Counsel have found three cases where the tort of deceit in these circumstances has been applied to married couples but never at above county court level. The only transcript that has been found is that of *X v Y* where the defendant appeared in person.

24. W's statement of grounds annexed to her strike out application commences as follows:

    i) The law will not recognise or allow actions for deceit between married couples where the representation alleged is as to the paternity of the child of the family…

25. There have been no further reported cases in England but there is an important decision of the High Court of Australia in *Magill v Magill* [2006] HCA 51 where a powerful court of six judges headed by Gleeson CJ was assembled. Three judges gave one judgment and the other three gave individual judgments, all with somewhat differing reasons, in respect of intimate matters such as paternity. The thrust of five of the judgments, generalising to perhaps an impermissible degree, is that it would only be in very rare circumstances that the tort of deceit would apply as between husband and wife.

26. In the light of my conclusion on the second issue I do not have to make a concluded finding on this issue. I read a number of learned articles to which I have been referred on the subject. My view is the tort of deceit can exist between husband and wife in respect of intimate matters and that W's answer that H's claim can always be subsumed within a financial remedies application is not sufficient. I refer to the following matters:

    i) I can see no logical reason why the law should encourage honesty between unmarried couples so as to create an obligation which if breached opens the wrongdoer to an action to deceit yet absolves from such liability a wrongdoing spouse. It seems to me contrary to public policy that the law should be so interpreted;

    ii) There is nothing in the Law reform (Husband and Wife) Act 1962 which restricts which torts are actionable and the court should be slow to impose a blanket restriction not found in the Act;

    iii) Whilst in most cases it may be that there are ongoing financial remedy proceedings where the wrong can be taken into account, there will be cases where that remedy is not open. For example, if a marriage breaks down and a husband re-marries before issuing his claim for financial remedy orders and he subsequently finds out that he has been the victim of paternity fraud he will have no remedy under the Matrimonial Causes Act, even if he was the financially weaker party;

    iv) The plurality of the court in *Magill* considered that a mantle of privacy protected a spouse's extramarital sexual conduct and that "private matters" of sexual conduct and a false representation of paternity are not amenable to assessment by the established "elements of deceit". But as a critic of the judgment has pointed out these are objective questions of fact. The context may make proof of fraud difficult and highly difficult questions surrounding the assessment of damages may still arise. Sometimes such questions will be so difficult to answer as to make recovery impossible, but that does not to my mind exclude the existence of the tort.

27. <u>Parallel Proceedings</u>

The second ground for striking-out the claim is set out by Mr Rushbrooke QC and Mr Munby as follows:

(2) The claim is an abuse of the Court's process or is otherwise impermissible because, in circumstances where the parties are engaged in proceedings under the Matrimonial Causes Act 1973 in which a financial provision order is sought under s.23 of that Act, the claim is fundamentally incompatible with, and amounts to an improper collateral attack on, the Court's jurisdiction under s.23, including with regard to the mandatory requirements of s.25 of that Act.

This is expanded in subsequent paragraphs.

28. I find the arguments that W puts forward under this heading to be compelling.

29. Parliament has provided a statutory remedy for financial provision upon the breakdown of marriage. Section 25 of the Act sets out matters to which the court must have regard in deciding how to exercise its powers to make financial remedy orders. Section 25 (2)(g) requires the court to have regard to "the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it". Bad behaviour by a party therefore falls to be considered if, and only if, it crosses the line set out by Parliament.

30. I have been referred to Bennion on Statutory Interpretation (7th ed) which includes the following:

    25.9 An Act of Parliament may impliedly displace the common law. In considering whether an act has this effect, the courts will consider the extent to which the legislative purpose would be undermined by the common law continuing to operate alongside it.

    And at 25.11: Where legislation forms a comprehensively statutory scheme for dealing with a matter this may be taken as an indication that there is no intention for existing rights or remedies to apply in the same circumstances.

31. The difficulty is that it is not always clear whether an Act is intended to be a comprehensive statutory scheme or to co-exist with common law rights and remedies. But, long experience in this area makes it clear to me that allocation of the parties' resources is to be covered by section 25 and not by other common law remedies.

32. I am supported in this interpretation by the dicta of Thorpe and Laws LJJ in *Prazic v Prazic* [2006] 2 FLR 1128, where Thorpe LJ said as follows:

    25. There are a number of general points to be made: First, I find it hard to conceive that where a married couple are engaged in contested ancillary relief proceedings, the application of a TOLATA claim by one against the other could possibly be justified. As the decision in the House of Lords in White v White [2001] 1 AC 596 makes plain, issues between a husband and a wife are to be determined within the four corners of the Matrimonial Causes Act 1973 and on the application of the statutory criteria there set out. The issue of separate proceedings to establish relatively arcane questions as to equitable entitlement between them is deprecated.

    Laws LJ specifically underlined his agreement with that passage.

33. The deceit proceedings are listed alongside the financial remedy proceedings. I asked Mr Gruder how it was that he would suggest I should assess the claims under the respective proceedings and how they fitted together. He said that the exercise and thought processes that I should do are as follows:

    i) Assess what W would have got by way of lump sum if the marriage was dissolved at the time of C's birth;

ii) Assess what her MCA claim would be valued at today. The difference between (i) and (ii) is the level of damages;

iii) Assess the sums spent by H on living expenses and gifts to W and award them as additional damages. It would be wrong for W to benefit from them in any way;

iv) Proceed to do the section 25 MCA exercise;

v) Assess what W's needs are;

vi) Ignore any sharing claim that W might make for the period from the time of C's birth, such claim being relevant only in respect of the period from the date of the marriage to C's birth. In any event the damages would eliminate any sharing award thereafter;

vii) Consider whether W's outstanding needs, if any, should be met as part of a discretionary exercise.

34. This answer illustrated the difficulty that H faces. He asks the court first to carry out a hypothetical calculation of what W would have received if assessed at the time of C's birth. There is no authority for this approach and in any event this is not a point that has been raised at any of the directions appointments before me or any other judge, meaning that there will be no evidence at the hearing of any asset values as at that time.

35. He asks me also to carry out hypothetical calculations of household expenses over many years, of which once again there is no detailed evidence, and exclude from those household expenses, as in my judgment I must, the element that is attributable to C and to H. How I am to do that calculation is unclear. I then make an actual calculation of the value of the various gifts (as yet unidentified) which H has given W excluding from that value any benefit that H may have received from them.

36. H says that the problem faced by Sir John Blofeld in *A v B* that led him to say that "*In my view it is quite impossible to split these sums of money* (the sum allegedly spent on family living expenses) *and allocate them in any percentages to any of these 3 people. There is no evidence to enable me to do so. They went on family living* (paragraph 65)" and thus to conclude that he was unable to make any award of damages in respect of the living expenses is not one that arises in this case as it is possible to see by reference to W's budget in the financial remedy proceedings how much of the living expenses were personal to her. I disagree that the budget provides either the clarity or reliability that would be needed for such an exercise.

37. H says that as a result of W's fraud any doubts about the credit H must give for the benefits that he has received resulting from the alleged tortious act must be resolved in his favour; that by agreeing to pay for C's expenses, past and future, he has given or is giving credit for benefits he has received from the act; and that there is no further credit to be given to W from the time of C's birth because the relationship was tainted by W's deceit and was in reality of no benefit to him.

38. It appeared to me that H was denying that he has to give credit for the benefits that he has received from the alleged tortious act but he disavows that and accepts that authority such as *Smith New Court Securities Limited v Citibank N.A.* [1997] AC 254 makes it clear that the claimant must give credit for any benefits which he has received as a result of the act.

39. I am bound by the decisions of *McFarlane* and *Rees* [2004] 1 AC 309, as explained by Nicola Davies LJ in *B v IVF Hammersmith Ltd* [2019] 2 WLR 1094:

> "*At the core of the legal policy which prevents recoverability of the identified loss in the Rees and McFarlane cases was the impossibility of calculating the same loss given the benefits and burdens of bringing up a healthy child. If it is impossible for the court to calculate the value to be attributed to the benefit of the child, so as to set off such value against the financial cost of the child's upbringing as a matter of legal policy in tort, how is the task possible for a court if such loss results from a breach of contract? Added to this is the sense, reflected in the judgments in Rees and MacFarlane, that it is morally unacceptable to regard a child as a financial liability.*

40. I disagree that by taking on pecuniary responsibility for C H has satisfied the requirement that he must give credit for the benefit received. The benefits of having a much loved child in a party's life is not to be measured purely in expenditure made. Nor is it possible to say that the benefit of the years of building that relationship is made valueless by W's alleged deceit. To adopt H's arguments would be inconsistent with *McFarlane.*

41. Mr Gruder says that the amendment to his pleadings to remove the original paragraph (ii) expressly deals with this point, but this is only a partial remedy. He still is faced with the problems set out above.

42. There are many other difficult aspects of H's argument. They include the fact that the length of the marriage and the existence of a child who is a blessing to both his parents become irrelevant factors. I agree with Mr Gruder that the fact that damages may be difficult to assess is not a reason for saying the liability does not exist, but this long passage of my judgment illustrates why the route that the husband invites me to take is so plainly inappropriate. Even if I was wrong about the difficulty of quantifying damage or the credit H must give for the benefits received, I would still come to the same conclusion about the inappropriateness of the remedy he seeks.

43. The court has the ability to conduct a full investigation of W's conduct to see if it crosses the threshold of section 25 (2)(g). I may have a difficult task in January in determining whether W's conduct, depending on what I find it to be, crosses the threshold. If it does there may be a more difficult question as to what the financial consequences should be. These are all matters for another day.

44. Mr Gruder says that even if I am against the other parts of his claim, there remains the ability to set out precisely what gifts H has given W over the years and for which damages can be awarded £ for £. Bearing in mind the scale of the parties' wealth these may have been very substantial. But, this is an assessment that I can make and deal with as appropriate within my powers under the Matrimonial Causes Act. It is not a reason for allowing a tort claim to survive.

45. In considering the application I set out just a little of the impact of the claim in tort. The time estimate of the hearing was extended by 5 days to encompass the arguments that might arise in the deceit claim if it remained alive. The sum spent by the parties on the litigation between them is staggering. I have not had updated cost estimates covering the many parts of their claims that are not before me on this application, but bearing in mind the litigation in all three divisions of the high court and what I can recall of previous cost statements, I would be surprised if there was much change between them from £3 million. The husband's costs in respect of the strike out application alone are just in excess of £230,000. The costs of further litigation of these proceedings would be disproportionate to any gain that H might achieve.

46. I am of the clear view that the claim in deceit cannot survive. By reference to Part 3.4(2)(a) and (b) CPR I find;

(a) That the Claim Form and Particulars of Claim disclose no reasonable grounds for bringing the claim; and

(b) That the Claim Form or Particulars of Claim are an abuse of the court's process or are otherwise likely to obstruct the just disposal of the proceedings.

47. The continuance of these proceedings would cause considerable difficulty within the financial remedy proceedings and in my judgement adds nothing legitimate to them.

48. I turn finally to Mr Gruder's submission that I should not strike out this claim because of the complex issues it raises. I do not regard the issues as being unduly complex and it would be a dereliction of my duty to permit the claim to continue.

49. I ventilated with counsel whether it might not be more appropriate to stay the deceit proceedings and formally strike them out at the conclusion of the financial remedy proceedings. Both parties urged me not to take this course and I therefore say no more about it.

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court

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FAMILY DIVISION
[2019] EWHC 2816 (Fam) (No.2)

No. QB-2019-000813

Royal Courts of Justice
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Monday, 28 October 2019

Before:

MR JUSTICE COHEN

(In Private)

B E T W E E N :

FRB	Claimant
- and -	
DCA	Defendant

MR J. GRUDER QC (instructed by Vardags) appeared on behalf of the Claimant Husband.

MR T. MUNBY (instructed by Payne Hicks Beach) appeared on behalf of the Defendant Wife.

J U D G M E N T

MR JUSTICE COHEN:

1 I have this morning handed down judgment in this matter and I now have to deal with ancillary matters. The first two are interrelated or, if not interrelated, at least broadly within the same area of debate, namely what costs order should I make, if any, and whether or not there should be a payment on account.

2 First of all, there is no doubt that the wife has "won" this litigation. She has been the successful party in the proceedings and, as such, she is entitled to her costs. Mr Gruder's suggestion that I should park the issue until the financial remedy proceedings are concluded and I have heard the evidence is an unattractive argument. I have to deal with the matter now and I will be in a better position to deal with it now than I will be at a later stage, or at least in no worse a position. In fact, if I did put the matter off and there had to be another hearing, there would be Mr Gruder and Mr Munby arguing the same points as they have argued in front of me today, with the consequent additional cost.

3 The second issue then is whether or not I should make an order for indemnity costs, as the wife seeks, or an order on the standard basis, as the husband seeks. My view is that costs should be ordered on a standard basis. This is not a classic fraud case. This is a case where in fact I have not come to any conclusions about the underlying subject matter of the action, namely whether or not the wife has misled the husband in relation to the paternity of C.

4 Further, this is a human tragedy for both sides that I am dealing with and I think that anything that I do to raise already very high temperatures is to be avoided. Thirdly, the issues that have arisen in the deceit proceedings will in a different form appear in the financial remedy proceedings and whilst I have found that the husband has approached the problem, if I can put it this way, in completely the wrong way, I have not found that there is not a problem.

5 I do not think in coming to a decision on this matter, I am significantly influenced by the fact that the husband has launched proceedings in all three divisions of the High Court. The husband has not lost on all the points argued before me and nor has the wife covered herself in glory in some of the answers that she has given to questions that have been asked of her in the proceedings. All these factors point to an order on the standard basis.

6 The third issue then is to what extent do I limit the wife's costs and bring her down from 100 per cent. In my judgment, it is right that there should be a deduction, principally for the reasons that have been articulated in front of me, namely that a considerable amount of time has been spent on an issue (whether the tort of deceit can exist between husband and wife in intimate matters) on which the wife has not succeeded. There is no doubt that argument will have increased the costs to some extent. Secondly, it is fair to say that the husband has succeeded in flushing out an element of the case in which the wife has been less than honest and, thirdly, that some, but a small element of the material that has come out in these proceedings will be of use in the financial remedy proceedings.

7 Mr Gruder places in front of me the idea that I should make an issue-based award. I decline to do that. It seems to me that the only people who would benefit from it would be the costs draftsmen. This is one of those cases where it is simply not possible to identify and cost an issue as a discrete issue. It is very different from those cases where perhaps there is a major

argument about the valuation of a particular asset where it is easy to hive off the relevant costs but that does not apply in this case.

8 The order that I have determined that I will make is that the husband will pay 80 per cent of the wife's costs of the action including the strike-out.

9 I come now to the question of payment on account. The rules are clear: I shall order a party to pay a reasonable sum on account of costs unless there is good reason not to do so, and there is no good reason for me not to do so. Mr Gruder perfectly properly raises the issue that a large amount of the wife's costs will be challenged as being necessary or proportionate and I bear that in mind.

10 I calculate the sum that I will order as follows, starting with figures net of VAT: of her bill of £376,000 costs, I reduce the figure by 80 per cent, which produces a figure of £300,800. I then for the purposes of a payment on account order that the husband pays what I calculate as 55 per cent. That is a relatively modest percentage if, as the parties agree, the wife can expect to recover 70 to 75 per cent, which produces a figure of £165,400, to which I then add VAT, which brings a figure of just under £199,000. I am going to round it to £200,000. Therefore, I shall order that the husband pays £200,000 inclusive of VAT on account of costs, and I gain such comfort as I can from the fact that if I have in any sense overshot the mark, which I think is very unlikely, then that is something that can be ironed out in due course. Whatever the outcome of the financial remedies' litigation, the wife will be in a position to make any refund of funds that may be necessary.

CERTIFICATE

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