Neutral Citation Number: [2018] EWHC 588 (QB)

Case No: HQ16X03670

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/03/2018

Before :

SIR DAVID EADY
(Sitting as a Judge of the High Court)

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Between :

AXB	**Claimant**
- and -	
BXA	**Defendant**

- -
- -

Adrienne Page QC, John Ryder QC and Adam Speker
(instructed by **Carter-Ruck**) for the **Claimant**
The Defendant did not appear and was not represented

Hearing dates: 12 and 13 February 2018

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Judgment - Redacted

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Sir David Eady

Sir David Eady:

Introduction

1. The Claimant, who is a man of considerable wealth, is married with small children. His evidence was to the effect that his relationship with his wife was for a time, between 2014 and 2016, going through a difficult patch and, during that period, he met the Defendant and became infatuated with her. They did not live together as a cohabiting couple, but they would meet regularly in various parts of the world and on such occasions unprotected sexual intercourse would take place. This relationship seems to have lasted from mid-2014 until August 2016. By that time, he had come to the conclusion that the Defendant regarded him primarily as a "soft touch" from whom she could demand, and often obtain, large sums of money, sometimes by making claims (e.g. of pregnancy) which turned out to be untrue. Moreover, after he made it clear that he wanted no more to do with her, she nonetheless made a nuisance of herself by harassing him or his wife and by revealing details about their relationship or disclosing private correspondence to third parties – for no better reason than to cause him distress and embarrassment. At least, that is how he sees it.

2. These proceedings, which were commenced on 24 October 2016, are intended to obtain various remedies, and in particular injunctive relief in order to try and prevent her from harassing him or his family, and from further disclosing information or documents in respect of which he has a reasonable expectation of privacy. He also relies on the tort of deceit with a view to recovering sums of money he paid to her in response to claims now said to be false; specifically, two allegations that she was pregnant with his child, and a suggestion that she had become homeless as a result of his having broken up a pre-existing relationship.

3. Although the Defendant now happens to live mainly in either the United States or Germany, there has never been any challenge to the court's jurisdiction in these proceedings. When they were begun, I am told that she had been living in England for some time. Furthermore, a number of the alleged breaches of privacy took place in London, most particularly by passing information or documents to colleagues or members of his staff based there. She was for a time represented by English solicitors and counsel (who settled her defence).

4. The Defendant has recently been using the services of an American lawyer who communicates from time to time with the court or with the Claimant's solicitors, with a view to discouraging the continuance of these proceedings, which he has inaccurately characterised as an example of "libel tourism"; and/or threatening to cause embarrassment to the Claimant from outside the jurisdiction by publishing not only personal information but also allegations of a scandalous nature about his personal integrity or his business affairs – all of which are vehemently denied and which have not been supported by any evidence. What he has not done, however, is to assist the Defendant in progressing these proceedings, whether by taking part in the pre-trial hearings, or attending the trial itself. This was despite the Claimant's offer to pay her travel expenses – although she sent a message at the beginning of the trial indicating that she was prepared (too late) to accept it.

5. The date of the trial was notified to the Defendant more than six months ago and she was given every opportunity to avoid inconvenient dates. Although it was suggested

quite recently that the trial might be adjourned on health grounds, no evidence was produced to justify taking such a course and, in particular, there was no medical evidence offering a diagnosis or prognosis. There was merely a cursory letter from a clinic in Munich stating that she was receiving treatment and was unfit to participate in litigation. Not only was this uninformative, but it seemed to be inconsistent with her behaviour in launching proceedings of her own [REDACTED] (dealing with matters which could have been raised by way of counterclaim in this litigation). Her explanation was that the proceedings had been prepared months before and all she needed to do [REDACTED] was give the "go ahead".

6. Moreover, the Defendant failed to serve witness statements by the appointed day (31 January), or to fulfil her obligations on disclosure of documents, within the appointed time limits. She was barred from serving witness statements without obtaining permission from the court (i.e. relief from sanctions). Various documents were emailed to the court during the hearing, or in one case after it was concluded, with a view to their being taken into account, presumably, as hearsay evidence, but this plainly did not give the Claimant or his advisers a fair opportunity of dealing with them.

7. The parties to this litigation have been anonymised from an early stage and, after careful consideration, it was reluctantly decided also to conduct the trial in private. It is, of course, unusual to have both anonymity and a private hearing, but I was unable to think of any way in which a public hearing could take place without the parties being immediately identifiable from the details of the evidence. Much of it concerned personal and private matters and an open court hearing would plainly have defeated the object of the exercise. This judgment, however, may be regarded as public, save for minor redactions where indicated by square brackets.

8. It is well settled that the court must take into account, when considering questions of privacy, not only the interests of the parties and, of course, the importance of open justice, but also the interests of relevant third parties, such as in this case the Claimant's wife and children. This argument often sounds unattractive in such circumstances because the relevant claimant, as here, will himself have been at least partly responsible for putting his family's interests at risk by his own conduct, but nevertheless, it is right to take their Article 8 rights into account and to weigh them against the Article 10 rights of any who may wish to publish the details. Here, it is difficult to see any legitimate public interest in this unhappy and intensely personal saga.

9. I shall now address the claims individually.

Deceit

10. The first head of claim is based on deceit. It is alleged in paragraph 2.1 of the particulars of claim that in or about July or August 2014 the Defendant represented to the Claimant that she was pregnant with his child, which is admitted in the defence at paragraph 42. That is consistent with a number of contemporary emails. She also claimed to have had a termination and undergone serious health problems as a result. She was making these claims over many months; for example, still complaining on 14 August 2015 that the Claimant had caused her to undergo an abortion. This can only have been a deliberate strategy, intended to deceive him, in order to bring pressure to

bear – not least with a view to financial gain. In fact, it is now uncontroversial that she did *not* become pregnant at that time. What she said in her defence was that she thought for a time that she might have been pregnant.

11. The Claimant paid her $30,000 on 30 September 2014, in the light of these false representations, a sum which was alleged to be required for medical checks. He was under the impression that they had become necessary in the aftermath of the supposed pregnancy and termination. He says that he would not have made such payments if he had known the truth. Her pleaded case was that the payments were made so that she could rent a flat in New York, away from her partner, and "where [he] could come to see her and have sex with her". She says that he paid for her medical expenses because she was "unwell". But the fact is that she left him under the false impression that she had been pregnant in 2014, and had undergone a termination, until the end of July 2016. It seems to me that it is more likely than not that this falsehood, perpetuated over two years, must have been for a purpose and that this was to obtain financial advantage.

12. Next in point of time, there was a representation in May 2015 that he had been the cause of the relationship with her long term partner coming to an end – as a result of which she had become homeless. In fact, such representations were made in various emails between December 2014 and May 2015. This is pleaded at paragraphs 5 and 6 of the particulars of claim. In the light of this, the Claimant paid her $100,000 on 26 May 2015. This money went towards the provision of an apartment in London. He would not have paid had he known the true position. The Claimant does not know whether her earlier relationship was in fact terminated at any point, but it is now apparent from paragraph 67 of the defence that, at least, the relationship improved between February and May of that year. Thus, *if* it was broken off in December 2014 at all, the status quo was soon resumed. The Defendant does not challenge in her defence the allegation in paragraph 6 of the particulars of claim that she and her partner shared the London flat, which was registered in his name, until May or June 2016. The Claimant suspects that the true position was that the Defendant and her partner were simply seeking to exploit the Claimant's infatuation in order to obtain from him as much money as they could. At all events, it is reasonably clear that he did not cause her to become homeless. He seeks to recover the sum he paid.

13. In her witness statement sent to the court late in the day, the Defendant explained the $100,000 payment on the basis that there had been no "blackmail" involved: it was simply a voluntary gift from the Claimant so that she could have a nice summer, play polo and spend some time in Italy. This was not tested in any way and I should not attach any weight to it, in any event, since it came in too late. It was put rather differently in the defence, at paragraph 132(d); namely, that the payment was to enable her to take time over the summer to consider and decide on undertaking a course of study. I believe that it was more likely to have been prompted, as the Claimant contends, by a plea of homelessness. The circumstances are most unusual and it can hardly be said that either explanation is *inherently* more plausible than the other. But, on a balance of probabilities, I am persuaded that the Claimant's account should in this respect be accepted.

14. In the particulars of claim at paragraph 8, there is a claim in respect of further false representations of a pregnancy. This time, it is accepted by the Defendant, she sent him in the summer of 2015 what purported to be a photograph of a positive pregnancy

test accompanied by a note saying, "This really could not have gotten any worse …". She puts this at 14 August of that year, which the Claimant accepts may well be right. But it seems to be part of a pattern at that time – ploys to obtain further funds from him. (She had recently said, for example, in an email of 31 July 2015, "Now you can deal with the damages so that everyone can move on". There is not much room for misinterpretation there.)

15. She asked him over to New York for the following Wednesday (19 August), from Switzerland, in order to accompany her to an appointment at a hospital. She told him that if he did not come along, she could have "the reports" (implying medical reports) sent on to his office. This clearly meant that they would be opened and seen by others and, therefore, a cause of embarrassment to him. (This was her *modus operandi* on other occasions.) He came, but by the time he met her she gave him the impression that she had already had a termination. It is now accepted in paragraph 77 of her defence that she was not pregnant at that time (and thus obviously did not have a termination either).

16. These were, therefore, blatantly false representations – especially perhaps by the sending of what purported to be a photograph of the pregnancy. I was asked to note the significance in fraud cases, generally, of testing a witness' veracity by reference to the documents: *The Ocean Frost* [1985] 1 Ll Rep 1, 57 (*per* Robert Goff LJ). They can often speak for themselves and this is a good example.

17. Had he known the truth, the Claimant would not have made the journey and he claims £4141.30 in respect of his unnecessary travel cost. In this instance, there was no financial gain to her from the false statement – only a loss to him. But it seems clear that she intended him to act on the representation and also that she must have known it to be false at the time(s) it was made. It was the whole premise of his visit on this occasion. That will be sufficient: it is not necessary to show in addition a motive of personal gain on the part of the defendant: see *Clerk & Lindsell on Torts* (22nd edn), at 18-01 and 18-20; *Derry v Peek* (1889) 14 App Cas 337; *Standard Chartered Bank v Pakistan National Shipping Corp (No 2)* [2000] 1 Lloyd's Rep 218.

18. Miss Page QC drew to my attention a line of authority to the effect that the tort of deceit may have no place in the context of intimate personal relationships, but it seems that it was based on public policy considerations concerned with the desirability of protecting the institution of marriage: see e.g. *Magill v Magill* [2006] HCA 51. On the other hand, in two modern first instance judgments in this jurisdiction, it has been held that such a claim will lie in a case where one partner has sought to deceive the other in order to obtain money or property: *P v B (Paternity: Damages for Deceit)* [2001] 1 FLR 1041, at [26]-[29], *per* Stanley Burnton J (as he then was) and *A v B (Damages: Paternity)* [2007] 2 FLR 1051, at [44]-[46], *per* Sir John Blofeld. In the latter case, Sir John thought it legitimate for the male partner to bring such a claim, since "he felt very strongly … about being taken for a ride". I too would accordingly hold that there is no policy reason why this Claimant should not sue for deceit if he is correct in thinking that the Defendant was deliberately attempting to mislead him on the matter of pregnancy.

19. Finally, in this context, there is a claim in respect of monies provided to the Defendant for the purpose of taking a course with Christie's to assist in her professional development. It seems that in or about August 2015 she told the

Claimant that she needed $35,000 to pay for a course of study in order to build a new life for herself. This was duly paid on 31 August, but he was told from the following March that she had run out of money and would be leaving her course. Later, she suggested that she wished to complete it but needed further funds from him for that purpose. Accordingly, he paid her a further £42,000 on 20 June 2016. What he now says is that it was in the context of her claims that the other relationship had come to an end, when clearly it had not, since she had been cohabiting with the "former" partner in the London flat – or at least living there together from time to time. His case is that if she had been frank with him, and told him that she was still in the other relationship, he would not have paid those sums. It is not, however, quite pleaded in this way.

20. In paragraphs 11 and 12 of the particulars of claim, it is said that she required the sums for her course and that the claims she made were false. Yet I have no reason to suppose that she did not join or pay for the course – or even that she had not run out of money. (According to the Claimant's researches, she was not very assiduous in attending and had been put "on probation" for that reason. But that could be for a number of reasons. In any event, she denies this.) The alleged falsehood appears primarily to relate to the termination of the other relationship. Yet I find it difficult to tie that in, as a matter of causation, to the Christie's course. It is merely said to be a matter of background context. It will be remembered that all this was going on while the Claimant's own relationship with the Defendant was, on its own rather unusual terms, still continuing. (He dates the end of it to August 2016.) He chose to pay for the course (and, it seems, to supplement her income as well), while she still gave every appearance of remaining his "mistress" (to use rather old fashioned terminology), but that is different from having to compensate her for having been, supposedly, the cause of her ending an earlier relationship. She pleaded that he paid for the fees to maintain control over her "so as to ensure he could continue to have sex with her". It would be rather surprising, surely, if she accepted the money, or embarked on a course of study, on that basis. In the end, however, I am not persuaded that these two sums are recoverable as damages for deceit.

Harassment

21. I now turn to the claims of harassment (contained at paragraph 15 of the particulars of claim). These are mainly connected with the Defendant's yet further allegations, from July 2016 onwards, that she was pregnant as a result of (consensual) unprotected intercourse (at the end of June of that year). But the Claimant also refers to events during the previous year, which are said to form part of the necessary "course of conduct". That has to be assessed in the context of a relationship that was still ongoing, in its rather sporadic way, until the end of August 2016. He says that he did not regard that relationship as being in itself a continuing course of harassment. Yet that may not appear easy to reconcile with the comment, in his second witness statement, to the effect that she was "someone who had been calculatedly manipulating my emotions as a means to tap into my wealth". I need to bear in mind that the scales appear to have fallen from his eyes in July 2016, when he realised that she had kept him under the false impression, for two years, that she had in 2014 been pregnant, and had undergone a termination, for which he had been responsible. It is ironic that the main focus of his harassment case now is on the time when the

Defendant actually *was* pregnant. But to put that in context I need to go back to his complaints about her earlier behaviour.

22. There had been an incident in May 2015 when she sent an email to the Claimant's personal assistant at the office revealing private information about their relationship. There were attached various reports following health checks and scans, for which he had paid, and which simply showed her to be in good health. She had done this following his refusal to meet her demands for $250,000, presumably to exert further pressure upon him.

23. At the time of the second (false) pregnancy claim, when the Defendant was pursuing him and his wife "relentlessly", he was driven to pay her $55,000 on 14 August 2015 in the vain hope that she would stop the pursuit. She regarded this sum as "simply insulting". She wrote to him on the same day repeating the false allegations that she had been pregnant and that she had an abortion. He found all this alarming and distressing at the time – and more so when he discovered a year later that she had not been pregnant at all.

24. Another unfortunate theme at this time is the suggestion made by the Defendant, also on 14 August 2015, that he had communicated to her a sexually transmitted disease (HPV), thereby giving rise to a possible cancer risk. There is no evidence to support this allegation by way of medical tests – either of him or of her. She says that she became aware of this in January of that year, but that is hardly credible since she said nothing to him about it until the following August and, in the meantime, had been quite prepared to have unprotected intercourse with him. I had some evidence before me as to the nature of this disease which tends to show that, even if she had been infected, (i) it could have lain dormant for some time, (ii) could therefore have been communicated by some earlier sexual partner, and (iii) could have been passed on even if a condom had been worn. But what is important, in the light of the evidence before me, is that there is nothing to show that either party had the disease at any time. Medical checks revealed nothing of the sort. Had such evidence been available to the Defendant, I have no doubt that she would have deployed it. It is reasonable for me to infer, therefore, that this was a "scare story" used by her as another means of bringing pressure to bear on the Claimant, and of making him feel guilty and thus more inclined to be financially generous.

25. There was another series of activities over Christmas 2015. It seems that after a considerable gap the parties met and stayed the night of 9 December at the usual London hotel. Shortly afterwards, on 14 December, he arranged a payment of £9,600 to enable her to spend Christmas in Argentina. He does not know whether she actually did so. He admits he did this partly out of a sense of guilt (still believing at the time, wrongly, that he had caused her to undergo two pregnancy terminations). She asked him to leave his wife and family, which he refused to do. Thereafter, she sent text messages to his wife while they were away on a family holiday over Christmas. This caused a great deal of upset and distress, as a result of which he reduced his contact with her over the next weeks – but she continued to call him, to send photographs of herself and to communicate by texts.

26. In February 2016, there were other instances of harassment by sending private material to his office, which the Defendant knew would be opened by members of staff and thus cause him acute embarrassment. These events are identified further

below in the context of privacy. He now, of course, realises that it would have been wise to terminate the relationship much earlier, but accepts that he was still infatuated.

27. I must now return to the main incidents relied upon as harassment in the following summer – when she *was* pregnant. They twice visited a gynaecologist, on 27 July and 11 August 2016 – appointments arranged by the Claimant. She confirmed that the Defendant was indeed pregnant. I cannot conclude with confidence, however, on the limited evidence before me for how long she carried the baby, or who the father was.

28. During the first of the visits, the Defendant was asked by the gynaecologist if she had previously had a termination and replied that she had not. This was a considerable surprise to the Claimant, as he had hitherto been told that the 2015 pregnancy *had* been terminated (on 19 August of that year after he had been asked to fly over from Switzerland). What he said in his second witness statement was: "It was a shock to me to discover that my complete trust in her had been misplaced and that I had been sharing deeply private and sensitive personal and family information with someone who had been calculatedly manipulating my emotions as a means to tap into my wealth". He clearly began to realise that he had (to borrow Sir John Blofeld's phrase) been "taken for a ride". This was one of the main factors in his decision, shortly afterwards, to bring the personal relationship to an end and to discuss outstanding matters (in particular financial matters) through intermediaries. On the other hand, seen from her perspective, it is easy to understand how his decision to distance himself at that juncture would have seemed "ruthless" and "cruel". Yet, for reasons best known to herself, she had chosen to mislead him quite deliberately over a two year period and to accept large sums of money from him while doing so. She can hardly have been surprised at the reaction when he found out.

29. On 10 August 2016, the Defendant rang the Claimant in Switzerland, from Munich, and told him that she had only one week left in which to decide whether to take a pill to terminate the pregnancy. She wanted him to come to London the next day to attend the appointment with her. He did so and reaffirmed to her that he would support her in whatever decision she made. Nevertheless, in her defence, she alleges that his behaviour was "manipulative, ruthless and cruel" and, moreover, that this justified her own conduct of which he complains.

30. On 11 August, the Claimant told the Defendant that he had a solicitor whom she could contact if she needed to do so, and that he had made an appointment for her the following day (which she did not attend). His suggestion was that she could speak to the lawyer freely and frankly in order to discuss what financial arrangements might be made about the child following the birth. She said that she could not make a decision unless he stayed the night, which he was not prepared to do. He went to stay at his sister's house. It was there that he discovered that his passport was missing and he was unable to contact her to arrange for its return. Later, during the morning of 12 August, she denied any knowledge of this and the Claimant had to arrange in due course for his other passport to be flown over to London from Geneva by a courier. The same day, they both attended a pre-natal appointment at the Portland Hospital where a scan was taken, of which the Claimant was given a copy. The doctor said that all seemed to be well and that there was no need to make a decision on termination with any urgency.

31. He then rearranged the appointment with his lawyer, for that afternoon, so that she could discuss financial arrangements. He waited outside the meeting at first, but joined them later. The lawyer explained that she could expect to receive about £1.2 m during the child's lifetime. The Claimant stated that he felt responsible for her situation and said that if she was going ahead and give birth to the baby he would give her a lump sum of about $500,000.

32. After that meeting, he raised again the subject of the passport, and she admitted that it was at her flat. She was, however, unwilling to hand it over and insisted that they should have dinner first, which they did. Thereafter, she pressed him to spend the night at a hotel where they had previously stayed, at which she had booked a room. He declined and left her there, when she promised to leave his passport there for collection the following day.

33. It is accepted by her in the defence that on 11 August 2016 she took the Claimant's passport from his jacket and did not return it until 16 August, when she chose to hand it in at his London office together with a foetal scan and a message which included the words "Don't screw me [AXB]. I trusted you". She knew that this meant it would be seen by others before being passed to the Claimant. There was obviously no need to have done this: the scan did not have to be included and the passport could simply have been passed to his lawyer or returned without comment. It could thus be characterised as an act of harassment, as well as being an infringement of his privacy. This certainly seems irrational and spiteful, but it may well reflect a degree of anxiety and emotional turmoil on her part. It is hard to make an assessment without hearing her evidence.

34. On 15 August, he claims that she told him on the telephone that she would require between £5m and £10m by way of future maintenance, so that she would be "set for life". She accepts in her defence that the figures were mentioned but (she says) in a different context. She alleged (although not, of course, in evidence) that she told him that "Even if you were offering £5m or £10m, that would not be appropriate. You cannot put a price tag on a baby's life". At all events, she had engaged an American lawyer to negotiate on her behalf. She pleaded in her defence that she told the Claimant's lawyer that, if she were to have the baby, a figure of £3m would be appropriate, but she hung up on the Claimant when he put forward the figure of £1.5m and turned her phone off. (She also said that she was looking for a sum of money for her former partner, although she recognised that this was not the right time to discuss it: see the particulars of claim at paragraph 15.3. It is difficult to understand on what basis this could have been a reasonable demand, and it would naturally tend to confirm the Claimant's suspicion or inference that they were out to exploit him as far as they could.)

35. To make repeated demands for money could well, depending on the circumstances, be regarded as "a course of conduct" for the purposes of establishing harassment. On the other hand, if a woman believes genuinely that she has become pregnant as a result of unprotected intercourse with a particular man and she attempts to make contact with him to discuss the future, and what financial arrangements might be appropriate, that would by no means necessarily be characterised as harassment or as unreasonable conduct. It would have to be carefully considered according to the circumstances of the individual case. On the two earlier occasions, it transpired that she was not in fact pregnant. That is true. As to the third occasion, however, although I can undoubtedly

conclude that she was pregnant, I cannot necessarily attribute responsibility to the Claimant – or determine what was the Defendant's genuine belief about paternity. She may well have had no doubt on the matter. It thus becomes especially problematic to determine what was, and what was not, unreasonable behaviour.

36. On 16 August, the Defendant had another meeting with his lawyer and said that she would accept a sum of £3m, based upon a need for £150,000 maintenance for 20 years. He seems to have taken this as her price for obtaining an abortion (as opposed to providing maintenance for the child), since it was said in the context of it not being easy for her to become pregnant and that she feared that she would be unable to have a child. Whether his interpretation is correct is by no means clear to me. It is possible that she was saying that she might keep the child, as she might not be able to have another: it would thus be necessary to make provision for future maintenance.

37. Then on 17 August there was contact from her American lawyer, who wanted to arrange a call regarding "the completion of the negotiations". The Claimant says he was "appalled", as he only then realised that he was engaged in "negotiations" about the price of an abortion. Again, however, I am not sure that his interpretation was necessarily correct. On another occasion, it is true, she did refer (in an email of 19 August) to the Claimant being "present that day" and to her needing "to make an appointment as soon as possible". It may be that the Claimant is correct when he suggests that her perspective on the pregnancy "seemed to be oscillating between a termination and keeping the child". This is borne out by contemporaneous notes of the meetings with the lawyer dated 12 and 16 August. She clearly wanted to know the financial implications attaching to each of these options.

38. The Claimant did not appreciate various communications from the Defendant in which she accused him of breaching her trust and not being honest with her, or standing up to his responsibilities. He says that her demands for money continued and that he found the conversations "incredibly stressful and upsetting" and he was then driven to confiding in his wife. He finally decided that the time had come "to cut ties with the Defendant". He thereafter refused to take calls from her.

39. Shortly afterwards, on 24 August, the Claimant informed her that he had asked a personal friend (who happened to be an enquiry agent) to make contact with her on his behalf and reemphasised that he did not want to be contacted by her again. This was as a result of her behaviour in the days leading up to this point, which he regarded as quite unreasonable.

40. By this time, he had discovered not only that she had been persistently lying to him for two years, and had obtained large sums of money from him by this means, but also that she was threatening to go to "the tabloids" if he did not "pay up" (i.e. provide further large sums out of all proportion to his maintenance obligations). Not to put too fine a point on it, he had been defrauded and blackmailed. He did not surely, in these unusual circumstances, need to make himself available personally and was behaving not unreasonably in nominating representatives who could negotiate on his behalf.

41. Despite this, in the last week of August and first week of September 2016, the Defendant sent by email to his office address various foetal scans (described

respectively as "week 10", "week 11" and "week 12"), accompanied by abusive comments, which she knew would be opened and read by members of staff.

42. An incident which the Claimant found especially distressing occurred on 27 September 2016 at the hotel where he was staying with his family in London for the purpose of attending a family memorial service. He went into the witness box and gave oral evidence about this episode, which seemed to me quite credible (although obviously not tested in cross-examination). The Defendant was present in the hotel lounge when he entered and he believes that she would have known that he was staying there, which he regularly did, and that he was going to be there with his family on this occasion. She has denied that she was in any sense stalking him, and there was a written hearsay statement provided by one of the organisers of the Defendant's course saying that *she* had chosen that venue for a discussion with her. It was, in other words, pure coincidence. It does seem curious that, of all the possible venues in London, she should, unprompted, have chosen the very place where the Claimant was known to stay when in London – and on the very day when he and his family were there for the memorial service. But she said in her defence that this hotel (being close to her flat) was used by her regularly, quite independently of the Claimant, for breakfast and tea and also for meeting people. She did not attend the trial, however, and this was yet another issue that was not tested in cross-examination.

43. I can well understand why the Claimant is suspicious that this was pre-planned by the Defendant as another means of bringing pressure to bear on him at a difficult time. He may well be right. It is for the Claimant, however, to prove that she planned the confrontation and deliberately "bearded" him in the hotel. I do not believe the evidence is unequivocal in this regard or strong enough for me to draw that inference.

44. At all events, it appears that on that occasion she asked him if he wanted to take the opportunity of discussing outstanding matters. There then ensued something of a stand off between the parties and the Claimant asked the hotel staff to call security. She was effectively removed from the premises for causing what he regarded as a disturbance. That version was challenged in the hearsay statement: it was denied that voices were raised. He claims that she accused him (within the hearing of other guests) of "impregnating" her, and also referred to an incident when she had been staying in the hotel with him and menstrual blood had been left on the sheets: she was threatening him (he claims) with a charge of assault and relying on the blood as evidence. (I understand that this relates to their stay on 9 December 2015.) There is room for differences of interpretation here, and in the absence of direct evidence it is not easy to form an impression of how much was heard by other guests. On any view, however, the threat of bringing a false claim for assault can be classified as an instance of harassment.

45. Towards the end of August 2016, the Defendant had telephoned the Claimant several times, but he immediately terminated the calls. This occurred on 25, 29 and 31 August. There were also three text messages on 24 August, including one which contained the thinly veiled threat to go to "the tabloids" if a "reasonable agreement" was not reached.

46. There were even calls to the British Embassy in Rome to try to make contact with him while he was in Italy. Irritating no doubt, but I do not believe that I should

characterise these as harassment of the Claimant, or as forming part of the "course of conduct".

47. It is alleged that the Defendant also instigated her former partner to contact the Claimant, and to be noticed by him in the vicinity of the hotel where he was staying. If true, this would also fall within the pattern or course of conduct. Furthermore, the Claimant received communications on 21 August and 14 September, which appeared to come from either the "former partner" or someone else acting in concert with her, and which contained oblique but rather menacing references to his business interests – clearly intended to be unsettling and to cause further anxiety. These may be inferences which the Claimant has himself drawn, quite understandably, but I do not think it would be right for me to come to such a conclusion on the balance of probabilities. I shall put these allegations to one side.

48. In considering whether any of the Defendant's conduct, relied upon as harassment, could be categorised as "reasonable" (in accordance with the Prevention of Harassment Act 1997), Miss Page urges me to have well in mind that she has not served any evidence on the issue within the time permitted. That does not mean, however, that this issue should be altogether precluded from the court's consideration. There is a factual matrix which is up to a point uncontroversial and some assessment can be made in the light of that background.

49. I have not found this issue of harassment as simple to determine as the formulation of the Claimant's case might suggest. If a woman becomes pregnant (as on this occasion she did), and she believes that a particular person is the father (which is less clear on the evidence), then it is not necessarily unreasonable to pursue him in search of decisions about what is to be done and how it is to be paid for. The Claimant may have found it distressing, but it seems that he had continued (despite two earlier false alarms) to risk unprotected intercourse and should have expected to be contacted for these purposes – however inconvenient. The critical question, which is quite difficult in this context, is whether her behaviour went beyond what would be reasonable and can be characterised as harassment. When approaches or demands were made under false pretences, that was easier to determine, but this time she clearly was pregnant. Without her evidence, however, it must remain unclear when she conceived, who was the father and for how long she carried the child. I am not, therefore, persuaded on the balance of probabilities that her demands this time were made on a knowingly false basis.

50. Nevertheless, there were particular instances of unreasonable conduct, such as taking his passport and sending the scans and other private material to his office (where she knew that it would be seen by others), but whether these represent a "course of conduct", readily distinguishable from the legitimate pursuit of financial discussions, requires careful consideration. I believe that the right course is to take into account all the events of which the Claimant complains, and then to discount or exclude those which can reasonably be interpreted as part of her legitimate communications with a man who was, at least, the prime candidate for having made her pregnant. I must then ask whether what remains can be characterised as a course of conduct amounting to harassment. I will exclude also most of the purely personal contacts (at least up to 24 August) and emotional outbursts, but it does appear to me that the involvement of third parties and the threats (i.e. of wider publication and of bringing a false claim of assault) are elements in such a course of conduct. In accordance with the Claimant's

pleaded case, I can also include the false claims pleaded under deceit and the communications relied upon as infringements of privacy (see below). They are all part of a consistent pattern of harassing behaviour which falls outside the notion of "reasonable".

51. As for injunctive relief, I would need to be satisfied that there remains, at the time when I am asked to grant it, a significant risk of further harassment: see e.g. *APW v WPA* [2002] EWHC 3151 (QB). It is an issue which is closely linked, however, to the next one I have to consider, namely that of past and prospective infringements of privacy rights. I shall address them together.

The misuse of private information and the need for injunctive relief

52. There seems now to be no doubt that the law regards sexual activity as a classic instance of information in respect of which there is a reasonable expectation of privacy – including where it involves adultery: *PJS v News Group Newspapers Ltd* [2016] AC 1081. There will arise, however, in most such cases the question of whether, in the particular circumstances, that expectation will be outweighed by other considerations. It is then necessary for the court to carry out what has become known as "the ultimate balancing exercise": *Re S (A Child)* [2005] 1 AC 593. I shall need to consider such questions as whether the information sought to be protected is so far into the public domain that the court can no longer offer any realistic hope of continuing protection and, in particular, against intrusion into the Claimant's private and family life: see again *PJS v News Group Newspapers Ltd* (cited above). At the moment, I am not so persuaded.

53. Another question to be considered is whether there could be a public interest in revealing the information such as to outweigh any Article 8 rights of the Claimant or his family: see e.g. also *McKennitt v Ash* [2008] QB 73; *Mosley v News Group Newspapers Ltd* [2008] EWHC 1777 (QB). This is not a case where any previous public statements or pronouncements by the Claimant have been so misleading or hypocritical as to require correction – in order to prevent the public from being materially misled. There have been none at all so far as I am aware.

54. There can be little doubt that the Defendant, certainly at one stage, wished to reveal the background to their relationship – whether for personal gain or out of vengeance I am unable to say. As I have already noted, she was on 24 August 2016 threatening the Claimant with "the tabloids". In view of this, and of her regular demands for large sums of money, I cannot conclude otherwise than that she represents a continuing risk to him, and to his wife and family, of further harassment, intrusion and infringements of privacy. There is no reason to regard the behaviour in 2016 as in some way out of character, or as explicable on the basis of emotional turmoil arising from the pregnancy. It is part of a consistent pattern. It serves to confirm that the Claimant is in need of such protection as the court can still afford him. So too, one only has to recall the apparent relish with which the Defendant is still choosing [REDACTED] to make scandalous allegations about the Claimant, both personally and with regard to the conduct of his business affairs, *without producing any evidence in support*, to appreciate the continuing threat she represents.

55. Of course, an injunction would have the effect, if enforced, of restricting her freedom of speech in this respect. I need, therefore, also to have well in mind the provisions of

s.12 of the Human Rights Act 1998. On the evidence so far available, I have to address the issue of whether the Claimant is "likely" to go on and obtain a permanent injunction at trial to similar effect. Sometimes, that can be a difficult question to answer at the early stages of litigation simply because of the lack of evidence. One can easily be wrong, of course, when attempting to predict the future, as the statute requires on applications of this kind. But here I have been able to answer with relative ease, largely because of the nature of the information in issue. It concerns sexual activity between two people in private and, moreover, there is no legitimate public interest in that subject-matter. It would only be a matter of prurient gossip, which it is possible that the Defendant and others would be able to turn to financial advantage, but that is naturally quite a different matter from genuine public interest.

56. Also, the mere fact that a person wishes to publish an account of her own life, or of episodes within it, does not provide a sufficient entitlement where to do so would engage the Article 8 rights of some other person(s) whose consent is not forthcoming: see again *McKennitt v Ash*, cited above.

My approach to compensation

57. As to the claim for compensatory damages, there are specific instances relied upon in the particulars of claim as being either breaches of confidence or examples of the misuse of private information (in accordance with the doctrine explained in *Campbell v MGN Ltd* [2004] 2 AC 457). These included the scans sent by email to his office in August and September 2016 (and the incident at the hotel on 27 September, which I have discounted) – all after he had told her, on 24 August, that he wanted no further direct communication. But he relied also on earlier events.

58. There was the incident in May 2015 when she sent an email to the Claimant's personal assistant at the office revealing private information about their relationship. There were attached various reports following health checks and scans, for which he had paid, and which simply showed her to be in good health. She had done this following his refusal to meet her demands for $250,000, presumably to exert further pressure upon him.

59. Then, in February 2016, she sent envelopes to the office containing screenshots of their private correspondence – again opened and monitored by members of staff. She also left roses and chocolates to be delivered to him. This was after he had declined to purchase for her a painting valued at approximately £1m. The next week two women appeared at his office at her instigation, to deliver three large prints which he had given her. Each was defaced and the word "LIAR" was scrawled over them. They also brought envelopes containing screenshots of their personal correspondence.

60. These are examples of revealing personal information in respect of which there was a reasonable expectation of privacy and there was no conceivable justification for doing this. It was simply to embarrass him and to bring pressure to bear, so as to make him more susceptible to her financial demands. If he did not realise that at the time, it became clearly apparent to him once he realised that she had been lying to him about the alleged pregnancies.

61. Similarly, the sending of the scans in August and September 2016 was also plainly an infringement of his Article 8 rights and a misuse of private information. I have

already concluded that these incidents can all be classified as instances of harassment, also, but I need to avoid any question of double counting when the issue of compensation falls to be considered. So too, the instances of deceit are relied upon also as being part of the course of conduct amounting to harassment. That is reasonable, but again I must guard against double counting.

Abuse of process

62. There has been a suggestion from time to time that the claim should be struck out as an abuse of process. This is raised simply because it is said that the Claimant has put forward an account of the relationship between the parties which "he fully knows to be false". That is difficult to sustain in light of the fact that he gave evidence and was available to be challenged on his account. The Defendant gave no evidence herself. Moreover, it is not possible on the material that is before me, and which is uncontroversial, to conclude that his evidence is to be disbelieved, or that he has been putting forward a case he knows to be false. I cannot see that he has "forfeited the right to have his case determined". That is the formidable hurdle the Defendant would need to surmount: *Fairclough Homes Ltd v Summers* [2012] 1 WLR 2004. It would be preferable no doubt to hear the evidence on both sides, and to have it properly tested, in order to arrive at a more informed decision, but notwithstanding the absence of the Defendant and her limited participation in this litigation, the Claimant is entitled to have his case heard on the evidence that is available.

My conclusions as to the Claimant's remedies

63. I can see no reason why the Claimant should not recover the sums he paid out because of her admittedly false representations of pregnancy in 2014 and 2015. So too, the sum of $100,000 paid in May 2015 was, as I have found, transferred to the Defendant because she was claiming falsely that the Claimant was the cause of her becoming homeless – and not for any of the rather unconvincing reasons she has put forward. That too should in principle be recoverable. Whether it can actually be recovered is another question, but he is entitled to establish that he "was taken for a ride" in this respect.

64. On the other hand, I have not been persuaded that the payments towards the Christie's course in 2015 and 2016 can be attributed to the false representations of homelessness, or to the supposed termination of her previous relationship.

65. There are also claims in respect of harassment and privacy which would usually sound in compensatory damages as well as forming the basis for injunctive relief. I shall award a total of £5,000 in respect of the various infringements of privacy (identified above at paragraphs [22], [26], [33], [41] and [57]-[61]), but nothing separately under harassment.

66. I will hear submissions as to the appropriate currency for any payment.

67. I am also persuaded that the court should grant injunctions, founded upon harassment and privacy, in order to attempt to protect the Claimant against further breaches or intrusions (I will hear submissions on the terms of the order.). The Defendant's behaviour, over a sustained period, was such as to lead me to the conclusion that she is likely to do what she can in the future to cause embarrassment and distress, either

for its own sake, or if she thinks it is likely to increase her chances of obtaining a large financial "settlement".