

**BETWEEN:**

**RTA (Business Consultants) Limited**

(Claimant)

**And**

**??????????????**

(Defendant)

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**DEFENCE**

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1. References in this statement of case to paragraphs are, unless otherwise stated, references to the Particulars of Claim.
2. The Defendant's case is as follows, on or around ????????? 2012 the Claimant's valuation agent attended the premises of a business operated by ????????? Limited in order to value the said business for the purposes of putting the said business, including the lease of the business premises (the "Lease") up for sale.
3. Due to misrepresentations and negligence in valuation of the Claimants valuer ????????? the Agreement was rescinded in writing on ????????? 2012.
4. In the premises the Claimant was at all material times carrying out Estate Agency Work as defined in and for the purposes of section 1 of the Estate Agency Act 1979.
5. Before entering into the agreement with ????????? Limited and/or the Defendant, the Claimant was obliged, by virtue of Section 18(1)(a) of the Estates Agents Act 1979 to give ????????? Limited and/or the Defendant the information set out below, before the agreement was entered into:
  - a. particulars of the circumstances in which the client will become liable to pay remuneration to the agent for carrying out estate agency work;
  - b. particulars of the amount of the agent's remuneration for carrying out estate agency work or, if that amount is not ascertainable at the time the information is given, particulars of the manner in which the remuneration will be calculated;
  - c. particulars of any payments which do not form part of the agent's remuneration for carrying out estate agency work or a contract or pre-contract deposit but which, will or may in certain circumstances be payable by the client to the agent or any other person and particulars of the circumstances in which any such payments will become payable; and
  - d. particulars of the amount of any payment falling within paragraph (c) above or, if that amount is not ascertainable at the time the information is given, an estimate of that amount together with particulars of the manner in which it will be calculated.
6. In breach of Section 18(1)(a) the Claimant did not give any of the information referred to in paragraphs 5(a) to (d) above to ????????? Limited or the Defendant before the agreement was entered into.
7. Prior to ????????? 2012, the Claimant had made contact with the Defendant verbally, and then in writing on ????????? 2012, with regards to the later meeting but did not provide the aforementioned information.
8. The Defendant seeks an order or declaration pursuant to Section 18(5) of the Estates Agents Act 1979 that the agreement is not enforceable as alleged or at all.
9. Whilst viewing the premises and immediately before the Defendant signed the agreement, the Claimant's agent represented to the Defendant as follows:
  - a. That he was a professional business valuation expert.

- b. That he valued business (including the lease) at £??,??? when it should have been less than £??,???
  - c. That the terms of the agreement referred to in paragraph 1 were industry standard terms.
  - d. That the entirety of the Claimant's fees, save for a small registration fee, could be paid out of the proceeds of sale of the business.
  - e. A small (as yet unspecified) registration fee would have to be in advance but that would be paid once it was agreed that the Agreement would be executed. The date on the Agreement was left blank in order that the Agreement might be executed at a later date.
  - f. That the Claimant would actively market the business in what was described by the Claimant's agent in terms as a vibrant seller's market.
10. But for the representations in paragraph 5 of this Defence, ?????????? Ltd and/or the Defendant would not have entered into the agreement.
11. The Claimant's agent's representations were false.

#### PARTICULARS OF MISREPRESENTATIONS

- a. The Claimant's agent's valuation of the business at £??,??? was a gross overvaluation and did not reflect the true value of the business. By virtue of the Claimant's failure to provide the Defendant with the particulars set out in paragraph 5 above it is to be inferred that the Claimant's agent was not a professional business valuation expert and should not have been employed by the Claimant to undertake such a duty.
  - b. The terms of the Claimant's standard form agreement were not industry standard but were onerous and draconian.
  - c. The registration fee amounted to £??? which is not insignificant.
  - d. The Claimant had no intention of allowing the Defendant to assess the Claimant's marketing efforts before charging the registration fee.
  - e. That the purpose of the agreement was to force the Defendant into paying the sum of £???
  - f. The Claimant would not (and did not) actively market the business. The Claimant initially sought to claim their costs incurred but have failed to show that any costs had been incurred.
  - g. The market was in fact depressed.
12. By virtue of the aforesaid the Defendant claims the Claimant's agent's misrepresentations amount to a complete defence to the Claimant's claim.
13. Further and or in the alternative the Defendant claims that there in providing its services the Claimant owed the Defendant a duty to do so with reasonable care and skill. Further and/or alternatively the Defendant claims that there was or an implied term in the agreement that the Claimant would perform its obligations under the terms of agreement with reasonable care and skill. In breach of its obligations to the Defendant the Claimant:
- a. Grossly overvalued the business.
  - b. Failed to consider the accounts of the business.
  - c. Failed to consider properly, or at all, the state of the market.
  - d. Failed to market the business.
  - e. Failed to advise, properly or at all, ?????????? Limited and/or the Defendant of the matters in 13.a to 13.d above
14. The Claimant is in fundamental breach of the agreement.

15. Further and or alternatively it is the Defendant's case that the terms of the agreement referred to or relied upon in paragraphs 2, 3 and 4 are, by seeking the payment of a liquidated sum, penalty clauses and are therefore unenforceable. Further the Claimant is put to strict proof as to the amounts claimed to be due and owing.
16. The Defendant is the sole director of ?????????? Limited Ltd. At all material times the Defendant believed he was acting in that capacity. The Defendant does not admit he entered into an agreement as alleged or at all with the Claimant.
17. If it is found that the Defendant entered into an agreement with the Claimant then it is the Defendant's case that he did so as a consumer for the purposes of the Unfair Contract Terms Act 1977. In the premises the terms of the agreement referred to, or relied upon in paragraphs 2, 3, 5 and 6 are unreasonable and unenforceable.
18. In the alternative the Defendant will submit that the terms of the agreement should be construed contra proferentum.
19. Save for those matters referred to in paragraphs above paragraph 1 is admitted. Paragraphs 2 to 6 are not admitted and the Claimant is put to strict proof of all matters alleged by the Claimant in particular the amounts claimed to be due and owing, as alleged or at all.

#### **STATEMENT OF TRUTH**

*We believe that the facts stated in this defence are true.*

Signed ..... ???????????? (defendant)

Dated .....