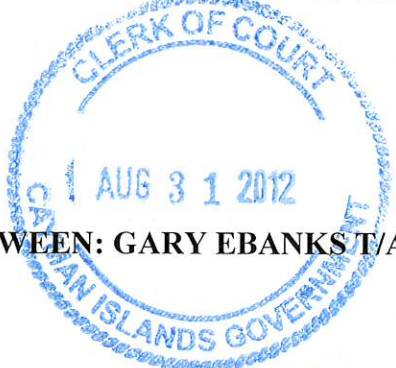


IN THE GRAND COURT OF THE CAYMAN ISLANDS



CAUSE NO: 383 OF 2010

**BETWEEN: GARY EBANKS T/A RELIABLE ROOFERS**

**PLAINTIFF**

**AND: PAMELA BODDEN**

**DEFENDANT**

**AMENDED WRIT OF SUMMONS**

**TO: Pamela Bodden  
c/o Julius Baer Bank & Trust Co. Ltd  
Suite 310, 3<sup>rd</sup> Floor Windward III  
Regatta Office Park, Grand Cayman**

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within [14 days] after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495GT, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

~~Issued this 19<sup>th</sup> day of October, 2010~~

Issued this 31<sup>st</sup> day of August 2012

NOTE - This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

**AMENDED STATEMENT OF CLAIM**

1. The Plaintiff was at all material times licensed under the Cayman Islands Trade and Business Licensing Law, (2002 Revision) to carry on the trade or business of a Builder/Contractor. The Plaintiff is also the owner and manager of Reliable Roofers, a roofing and building company, located at 134 North Sound Way, P.O. Box 357, Savannah, Grand Cayman.
2. The Defendant was at all material times the legal owner of Block 32B, Parcel 246, located at Destiny Avenue, Bodden Town, Grand Cayman (“the Property”).
3. Around June of 2008 at a birthday party for the Petitioner’s-Plaintiff’s son, the Defendant approached the Plaintiff and they both had a discussion about entering into a contract for the Plaintiff to build a house for the Defendant. Sometime afterwards the parties discussed the clearing and preparation of land located at Block 32B, Parcel 246, in anticipation of building the new home. At some point the Defendant also had an informal discussion with the Plaintiff, in which she told the Plaintiff that the loan for building the new house had been approved, pending the closing on the sale of her present house.
4. On June 16, 2009 the Plaintiff and the Defendant entered into a written contract wherein the Plaintiff agreed to build a four-bedroom home on Block 32B, Parcel 246 the Property (“the Original Contract”). The Plaintiff received the house plans from the Defendant and it was agreed that the Defendant would pay the Plaintiff the total amount of CI\$420,446.00~~7~~ by way of installments or drawdowns, for work to be completed on the home as follows:

<u>1.</u> Preparation of site footing and slab & cistern	\$36,784.00
<u>1.2.</u> To block walls & belting for roof	\$42,726.00
<u>2.3.</u> Roof trusses/timberline shingles	\$58,650.00

<del>3.4.</del> Electrical complete with fixtures	\$43,483.00.
<del>4.5.</del> Complete plumbing with tub & fixtures	\$20,978.00
<del>5.6.</del> Dry wall complete with knockdown	\$30,572.00
<del>6.7.</del> Plastering inside & outside	\$28,898.00
<del>7.8.</del> Windows & Doors	\$43,567.00
<del>8.9.</del> Cabinets, bath, counter tops	\$26,765.00
<del>9.10.</del> Marmaron outside/painting inside finish	\$19,468.00
<del>10.11.</del> Septic Tank complete with digging	\$10,687.00
<del>11.12.</del> 2 A/C Units (3&4 tons)	\$18,798.00
<del>12.13.</del> Tiling	\$17,373.00
<del>6.14.</del> Fill for around site & slab	<u>\$21,697.00</u>

Total – ~~the~~ Original ~~e~~Contract – material & labour: **\$420,446.00**

5. The Original Contract was stated to be a “fixed price contract”. It was agreed between the Plaintiff & the Defendant that \$420,466.00 (“the Fixed Price”) would be the fixed price for the works set out in the Original Contract. It was agreed that the Defendant would pay the Fixed Price as per clause 2 of the Original Contract.

~~5.6.~~—Subsequent to the signing of the contract, (a few weeks later), the Plaintiff informed the Defendant that the sale of her house ‘fell through’ because the potential purchaser’s insurance carriers discovered that the purchaser had a medical condition which disqualified the potential purchaser. The parties had a further discussion and the Defendant informed the Plaintiff that as the bank loan was conditional upon her former house being sold, she did not have all of the necessary funds to proceed with the project. Notwithstanding this set back, the Defendant ensured the Plaintiff that she was in the process of finding another purchaser. The Plaintiff had already commenced the work without a down payment and he had undertaken extensive work of clearing and preparing the property, because the Plaintiff knew and trusted the Defendant. In any event, and as the work was already underway, the Defendant confirmed to the Plaintiff that

she could find some available fund to the tune of approximately \$30,000.00 which could be applied in the meantime, to cover the preparation work which was already being done. It was agreed that the Plaintiff would continue the work so long as the cost for this initial activity remained within the \$30,000.00 cost range.

6.7. Due to the delay in the sale of the Respondent's house, the Plaintiff was unable to undertake any additional work, (apart from that which was associated with the initial clearing and preparation of the land), so the parties agreed to hold off on the main project until the sale took place. The Defendant and Plaintiff also agreed that no interest or financial penalty would incur to either party for this unforeseen delay.

7.8. A few months later, specifically sometime in mid September 2009, the Defendant informed the Plaintiff there was a definite confirmation for sale of her home and that the potential purchaser had made a deposit. Towards the end of September, the Defendant told the Plaintiff that the sale had gone through and the Defendant then gave the Plaintiff the go-ahead and the Plaintiff re-commenced working on the project in full force on October 1, 2009.

8.9. The Plaintiff proceeded to undertake the work with much speed and accuracy and at this stage as electricity was necessary, the Plaintiff proceeded to apply for temporary electrical supply from Caribbean Utilities Company, (CUC). In making the necessary arrangements for the installation of the electrical supply, it was discovered that the electrical pipes, (which were previously laid by the property developers), were undersized and not up to CUC specs, (and no weather heads were installed). The Plaintiff and the Defendant discussed the problem concerning the pipes, and suffice it to say, although the developers were contacted, they did not show up to change the pipes. After much discussion, the Defendant instructed the Plaintiff to "see about getting the job done". The ~~Defendant-Plaintiff~~ corrected the problem, even though this particular task fell outside the terms of the written contract. This was the first of many additional

tasks/variations which were requested and/or authorized by the Defendant, and undertaken by the Plaintiff. While the additional works/variations/changes did not form part of the written contract, at the behest of the Defendant, the Plaintiff carried out the additional work in good faith and the Defendant agreed to pay for the additional work. Throughout the entire period that the house was under construction, the Plaintiff continued to undertake additional tasks which were identified and acknowledged by the Defendant, and which fell outside the terms of the written contract, as set out below:

- (a) **Resize electrical ducts**: These ducts were needed for the electrical supply but found to be undersized and not up to CUC specs; the work was undertaken at an additional cost of **CIS10,890.00**.
  
- (b) **Increase slab height**: The Defendant's house plan called for the foundation of the house to be one (1) block height, (about 8 inches), above the road, but when the Defendant visited the building site and examined the foundation, she stated that the foundation was too low and requested that the Plaintiff raise the foundation to eight block height, (about five feet), above the road. Prior to making these changes and/or variations, the Plaintiff checked with the Architect who submitted the house design, and the Plaintiff was informed that the homes in that area were built one block height above the road because the land itself was approximately eight feet above sea level and that the homes in the area were not flooded during the hurricane. Notwithstanding the explanation provided by the architect, the Defendant insisted on the increase in height and she explained to the Plaintiff that during Hurricane Ivan her previous home got flooded and that she never wanted to have that experience again. The Defendant informed the Plaintiff that she had no problem paying for the additional work on the foundation. The Plaintiff then took the Plaintiff-Defendant to visit one of the homes he previously constructed at 61 Riley Circle in Savannah, so that the Defendant could view the height of the foundation and have a look around the home itself. The Defendant liked what she saw, and there and then the Defendant told the Plaintiff that raising the height of

the foundation on her house 'is a must'. The cost of this additional work amounted to **\$13,000.00**.

- (c) **Additional fill/material**: The raising of the foundation also resulted in the need for additional fill for both inside the foundation and around the house itself. This additional fill around the building was necessary as confirmed by the Planning Department. This extra fill resulted in an additional cost of **\$12,369.00**.
  
- (d) **Construct entrance steps**: Given the increased height to the foundation, additional steps had to be constructed upward; this extra work also resulted in an additional cost of **\$5,400.00**.
  
- (e) **Additional area and increased height of driveway**: Due to the increase in height of the foundation, the driveway also had to be elevated and widened. The widening was necessary to allow the Defendant sufficient space for maneuvering her vehicle when parking/reversing off the high ramp. The extra work resulted in an additional cost of **\$4,312.00**.
  
- (f) **Cypress Cedar Ceiling**: The Defendant's house plan called for a ceiling with sheetrock. However, when the Defendant went with the Plaintiff to view the home at 61 Riley Circle in Savannah, the Defendant became fascinated with the ceiling in that home and told the Plaintiff that she would like to replace her sheetrock ceiling with wood. Once again, the Plaintiff and the Defendant discussed the change and the Defendant instructed the Plaintiff that she definitely wanted the ceiling changed. As a result, both the Plaintiff and the Defendant traveled together to Miami to inspect the type of wood ceiling that the Defendant wanted, and a decision was made by the Defendant to purchase cypress select from Miami. The cost for this type of ceiling exceeded the amount in the original contract, thus there was an increase in cost which fell outside the contract as well. There arose an additional cost for ceiling work in the amount of **\$10,188.20**.

- (g) **Finish to exterior porch ceilings & garage:** The Defendant initially planned to use sheetrock in and around these areas of the house, but the Defendant instructed the Plaintiff to replace the sheetrock with cement board instead. The Defendant told the Plaintiff that ‘during Hurricane Ivan her garage ceiling was blown out when her garage door was blown in’ so she wants to use the stronger material. The cement board resulted in an additional cost of **\$8,109.25**.
- (h) **Increase size of cistern:** Upon reviewing the house plans it was discovered that the ‘man-hole’ and cistern was to be constructed underneath the garage, (which formed part of the dwelling). The Plaintiff and the Defendant discussed the potential problems which could arise from this; specifically, it was discussed that should the man-hole overflow this could flood the house. It was therefore decided that the man-hole and pump for the cistern would be moved to the outside (in the open yard). Once this was decided, the Defendant informed the Plaintiff that as the cistern, (which was also under a section of the garage), was a bit small, the cistern could now be extended under the entire space (now made available after the man-hole was moved). The size of the cistern was therefore increased and the extra work and material created an additional cost of **\$3,888.75**.
- (i) **Replacement bath tub:** The original plan called for a standard-sized bath tub, but the Respondent decided to replace the standard tub with a whirlpool Jacuzzi-style tub. The replacement tub was a much larger tub and additional work, including electrical as well as plumbing work for the Jacuzzi to function properly was indeed necessary. The additional cost amounted to **\$1,150.00**.
- (j) **Security system:** In the original house plan, there was no item/material listed for a security system. It was during the building of the house that the Defendant decided to put in a security system. The work for the security system was contracted out to a security firm by the Defendant, but the Plaintiff undertook the additional work to prepare the building by cutting walls, installing contacts to all windows and doors. This resulted in an additional cost of **\$800.00**.

(k) **Wiring for audio speaker system:** Similarly to (j) above, there was no inclusion in the original plan for wiring of the home for an audio system. The Defendant decided to add this in during the construction phase and the work was contracted out to an electrician by the Defendant. However, the Plaintiff paid the Electrician directly for the installation of surround sound, outlets and ceiling fans. This extra work resulted in an additional cost of **\$2,600.00.**

10. The works described in paragraphs 9(a) to 9(k) above are to be referred as “the Additional Works”.

11. It is averred that each time the Defendant requested or authorized the Plaintiff to carry out one of the individual items of additional work recorded in paragraphs 9(a) to 9(k) above, a new individual oral contract was formed. These contracts to complete Additional Works are together referred to as the “Additional Works Contracts” or individually as an “Additional Works Contract”.

12. Each of the Additional Works Contracts contains an implied term that the Defendant will pay a reasonable price for the work carried out under that Additional Works Contract.

13. Further and/ or in the alternative, it is averred that the Defendant had:

(a) actual knowledge of the Additional Works;

(b); knew they were outside the written terms of the Original Contract; and

(c) knew the Plaintiff expected the Additional Works to be paid for.

In the circumstances, each time the Defendant requested or authorized an additional work as stated in paragraphs 9(a) to 9(k) above, these formed implied contracts under which the Defendant would pay a reasonable price for work carried out.

~~10.14.~~ Further and/ or in the alternative, if no express or implied contracts have been made in respect of the Additional Works then by virtue of the fact that the Plaintiff has completed the Additional Works and by virtue of the fact that an advantage has been received by the Defendant as a result of the work done & services performed and materials supplied, the Plaintiff is entitled in restitution to claim for reimbursement for the value of the said advantage.

~~9.15.~~ The total sum outstanding for ~~the a~~Additional ~~w~~Works carried out by the Plaintiff is **CI\$72,707.20**. However, in order to be fair, the Plaintiff recruited the services of an independent Quantity Surveyor who inspected, evaluated and costed the extra work which was undertaken by the Plaintiff. Upon the submission & recommendation of the Independent Quantity Surveyor, the amount was reduced and the Plaintiff gave a credit to the Defendant in the amount of CI\$24,090.25, leaving a balance of **CI\$48,616.95**, which remains due and owing to the Plaintiff.

~~10.16.~~ During the period that the Plaintiff was carrying out work on the home, all efforts were made to complete all projects on schedule. However, there were instances when certain aspects of the work were delayed, due to the fact that the Plaintiff had to wait for other sub-contractors to complete their part of a particular job before the Plaintiff could proceed. Notwithstanding these set-backs, the Plaintiff completed the work on the home under the Original Contract and also the Additional Works. and the A Defendant received a eCertificate of Ffitness dated June 28, 2010 was then issued by the Cayman Islands Central Planning Authority, and the Plaintiff is presently residing in the home.

~~14.17.~~ To date the Plaintiff received a total sum of \$408, 963.00 from the Defendant as draw downs, on or around the following dates, for work undertaken under the ~~signed o~~Original ~~e~~Contract as follows:

(i) October 1, 2009	CI\$ 67,825.00
(ii) October 24, 2009	CI\$105,924.00
(iii) November 23, 2009	CI\$ 73,792.00
(iv) December 29, 2009	CI\$120,000.00
(v) February 2, 2010	<u>CI\$ 41,422.00</u>
Total funds received:	CI\$408,963.00

**Balance due/outstanding on ~~o~~Original ~~e~~Contract: CI\$ 11,483.00**

~~12.18.~~ During and after the construction of the said home, the Plaintiff had several discussions with the Defendants about the additional outstanding amounts due for the extra work which was being done. The Defendant promised the Plaintiff that she would pay for 'some things' but not others, as she did not feel that she was responsible to pay for all the additional work. The Plaintiff reminded the Defendant that as they had both discussed the changes every step of the way, it would be unfair for him to absorb some or any of the cost. Furthermore, the Plaintiff reminded the Defendant that only work that was absolutely necessary was undertaken, and at no time did the Defendant order the Plaintiff to refrain from carrying out the necessary additional work. The Plaintiff continued to discuss the matter with the Defendant and pleaded with her to make an offer to settle, because he was severely overdrawn and took a huge financial loss on the project. The Defendant finally agreed that she would settle the debt and sometime around 10:20 am on February 9, 2010, the Defendant went to visit the Plaintiff at his office, where they both worked on a payment plan wherein the Defendant would make payments in installments of \$500.00 per month, interest free. To date the Defendant has not followed through on her promise to pay the Plaintiff for the extra work.

~~13.19.~~ Although the Plaintiff submitted several bills to the Defendant for the payment of the sum owed, the Defendant has refused to pay the outstanding balance of **CI\$48,616.95**, which represents the cost for extra work undertaken, and which remains due to the Plaintiff. The Defendant has also refused to pay the outstanding balance of **CI\$11,483.00**, which remains due and owing to the

Plaintiff on ~~the original contract signed on June 1~~ the Original Contract, 6, 2010.

~~14. The Defendant remains indebted to the Plaintiff in the total sum of CI\$60,099.95, plus interest and costs thereon.~~

~~15-20. The Defendant has clearly breached her obligations to the Plaintiff and has caused loss and damage as follows. ~~clearly breached the written contract entered into on June 9, 2010 as well as the verbal agreements entered into between June 16, 2009 and February 9, 2010, with the Plaintiff. As a result, this has caused the Plaintiff to suffer loss and damage.~~~~

#### **PARTICULARS OF BREACH AND LOSS**

~~16~~21. The Defendant was under an obligation and/or duty to pay the Fixed Price under the Original Contract. In breach of the Original Contract, in particular clause 2, the Defendant has failed to pay the Fixed Price. The Defendant remains indebted to the Plaintiff for CI \$11,483 of the Fixed Price.

22. Furthermore the Defendant is obliged under the contracts expressly made in respect of the Additional Works to pay a reasonable price on a quantum meruit basis. The Plaintiff avers that a reasonable price for the Additional Works is CI \$48,616.95 based on his surveyor's report together with an uplift in respect of profit value arising from the work to be assessed.

23. The Defendant has breached the implied term to pay a reasonable price by failing to pay a reasonable price at all for the Additional Works. The Defendant's breach has caused loss to the Defendant in the sum of CI \$48,616.95 plus an uplift in profit value to be assessed.

24. Further and/or in the alternative, as the Defendant had knowledge of the Additional Works being carried out, knew the Additional Works were outside the written terms of the Original Contract and knew the Plaintiff expected them to be

paid for, an implied contract arose in respect of each of the works set out in 9(a) to 9(k) above (“the Implied Contracts”). Under the Implied Contracts the works were carried out for a reasonable price on a quantum meruit basis. In breach of the Implied Contracts, the Defendant has not paid a reasonable price for the Additional Works or at all. The Defendant’s breach has caused loss to the Defendant in the sum of CI \$48,616.95 plus an uplift in profit value to be assessed.

~~19.25. Further and/or in the alternative, if it is held that no contract/s existed with regard to some or all of the Additional Works, then in those cases the Plaintiff has a claim in restitution for unjust enrichment and is entitled to claim for reimbursement of the value of the advantage received by the Defendant as a result of the work done, services performed and materials supplied. The value of the advantage received as a result of work done & materials provided is \$48,616.95 plus an uplift in profit value to be assessed plus the increase in value of the Property to be assessed. is in breach of the written contract entered into on June 16, 2010; the Defendant is also in breach of several verbal arrangements entered into with the Plaintiff, between June 16, 2009 and February 9, 2010 and the Defendant is liable to the Plaintiff for damages, interests and costs.~~

~~17. The Defendant has failed and/or refused to pay the sum of **CIS60,099.95**, as promised and the said amount remains due and owing to the Plaintiff.~~

~~18. The Defendant has failed to give due consideration for the additional work, (inclusive of materials and labour), provided by the Plaintiff, and from which the Defendant has benefited.~~

20.26. The Plaintiff claims interest on all sums due, pursuant to the Judicature Law.

AND THE PLAINTIFF **claims:**

0.1. The sum of ~~CI\$60,099.95~~ CI \$11,483.00 in respect of the outstanding amount under the Original Contract; and

2. CI \$48,616.95 together with an uplift in respect of profit value arising from the work to be assessed; or

3. CI \$48,616.95 together with an uplift in respect of profit value arising from the work to be assessed plus the increase in value of the Property to be assessed; and

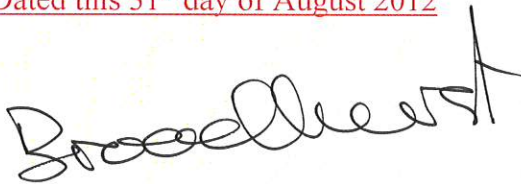
0.4. Pre and post-judgment interest; and

0.5. Costs

If, within the time for returning the Acknowledgment of Service, the Defendant decides to settle the claim due (including interest and costs), further proceedings will be stayed.

~~Dated this 19<sup>th</sup> day of October 2010.~~

Dated this 31<sup>st</sup> day of August 2012



LINWOOD ATTORNEYS BROADHURST LLC

Attorneys-at-Law for the Plaintiff

THIS AMENDED WRIT OF SUMMONS was issued by LINWOOD ATTORNEYS BROADHURST LLC, Attorneys-at-Law for the Plaintiff herein whose address for service is that of the said Attorneys-at-Law, 40 Linwood Street, PO Box 2503 GT, Grand Cayman, Cayman Islands, BWI, P.O. Box 30306 Grand Cayman, KY1-1202, Unit 118, Ground Floor, Elizabethan Square, George Town, Grand Cayman.

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495GT, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

### Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.



business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

~~LINWOOD ATTORNEYS BROADHURST LLC~~  
~~40 Linwood Street,~~  
~~PO Box 2503 GT,~~  
~~Grand Cayman,~~  
~~Cayman Islands, BWI P.O. Box 30306 KY1-~~  
~~1202~~  
~~Unit 118, Ground Floor, Elizabethan Square~~  
~~George Town, Grand Cayman~~  
~~Cayman Islands~~  
~~Tel: (345) 949 2000~~  
~~Fax: (345) 949 2020~~  
~~Email: [clinwood@candw.ky](mailto:clinwood@candw.ky)~~

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.