

DISSENTING OPINION BY LIM, J.

Associates filed its motion for summary judgment and supporting papers on May 26, 1998. Later, on June 12, 1998, Richardson filed his counterclaim. Therein, Richardson raised his TILA/Regulation Z defenses. Therein, Richardson also admitted his default, which rendered immaterial any deficiencies in Associates' initial moving papers relevant thereto. Thus were left only Richardson's defenses, and to Richardson the burden of proof. GECC Financial Corp. v. Jaffarian, 79 Hawai'i 516, 521, 904 P.2d 530, 535 (App. 1995), aff'd and modified, 80 Hawai'i 118, 905 P.2d 624 (1995).

In his June 19, 1999 *pro se* memorandum in opposition to summary judgment and in his August 10, 1998 additional memorandum in opposition to summary judgment, Richardson raised various matters in support of his TILA/Regulation Z defenses. However, those matters notwithstanding, papers attached to Associates' August 13, 1998 reply raised additional matters proving that Richardson's loan was for business purposes. But for Richardson's August 17, 1998 motion to strike purporting to raise "genuine" issues of material fact as to the business purposes issue, that proof would have been fatal to Richardson's defenses.

Richardson agreed to the briefing schedule terminating in Associates' August 13, 1998 reply. He should be held to his agreement. Moreover, he should not be permitted to sandbag by holding back matters in support of his defenses and thereby, in

effect, creating a claim to the last word. Cf. Takayama v. Kaiser Foundation Hospital, 82 Hawai'i 486, 496, 923 P.2d 903, 913 (1996) ("as a general rule, a party is bound to give all available evidence in support of an issue in the first instance it is raised at trial and will not be permitted to hold back evidence confirmatory of its position to offer on rebuttal"). Our decision today invites the abusive multiplication of "genuine" issues of material fact, for the mere purpose of strategic delay, evident here. After all, Richardson did not attempt to cancel the loan because of any ignorance or confusion about the financing caused by misrepresentation or nondisclosure on the part of Associates. He attempted to cancel the loan because, in his own words, "The interest was too high."

I would affirm, and therefore respectfully dissent.