

FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

CONCURRING OPINION BY RECKTENWALD, C.J.

I concur in the result, but write separately because I believe that HRS § 712-1207 (Supp. 2008) is ambiguous with regard to whether it applies to the patron who offers to pay the fee. The meaning of the phrase "in return" contained in HRS § 712-1207 on its face is unclear.

However, HRS § 712-1207 must be read in pari materia with HRS § 712-1200(1). See Bauernfiend v. AOA Kihei Beach Condominiums, 99 Hawai'i 281, 283, 54 P.3d 452, 454 (2002); HRS § 1-16 ("Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other."). As discussed in the majority opinion, the 1990 amendment to the text of § 712-1200(1), and the discussion in the accompanying legislative history about the purpose of that amendment, reflects the legislature's intent that the deletion of the phrase "in return" was needed in order to "make it clear" that the statute applied to the patron.

HRS § 712-1207 was subsequently enacted in 1998, and includes the phrase "in return." Given the legislative history of HRS § 712-1200(1), the inclusion of the phrase "in return" in HRS § 712-1207 reflects legislative intent not to extend the prohibition of the statute to the patron. See Agustin v. Dan Ostrow Const. Co., Inc., 64 Haw. 80, 83, 636 P.2d 1348, 1351 (1981) (noting that "the legislature is presumed to know the law when enacting statutes"). Thus, the circuit court erred in denying the motion for judgment of acquittal, and the result reached by the majority is correct.

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