

NOT DESIGNATED FOR PUBLICATION

KATHRYN M. BRADY	*	NO. 2001-CA-1884
VERSUS	*	COURT OF APPEAL
BOBBY WASHINGTON,	*	FOURTH CIRCUIT
JAMES MONAGHAN, AND	*	STATE OF LOUISIANA
JAMES MONAGHAN, D/B/A	*	
MONAGHAN'S ERIN ROSE	*	
AND DANA'S BAR AND	*	
RESTAURANT	*	

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-4475, DIVISION "I-7"
Honorable C. Hunter King, Judge

* * * * *

Judge Steven R. Plotkin

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(Court composed of Judge Steven R. Plotkin, Judge James F. McKay III,
Judge Michael E. Kirby)

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INC.**

AND JAMES MONAGHAN

AMENDED, AND AS AMENDED, AFFIRMED.

Defendants, Monaghan Properties, Inc. and James Monaghan, appeal the trial court's grant of summary judgment in favor of third party defendant, Unionamerica Insurance Co. Ltd. ("Unionamerica"). Finding that the defendants' arguments are moot because of our decision in Brady v. Washington, 2001-0983 (La.App. 4 Cir. 12/12/01), we affirm, but amend, the trial court's judgment.

Kathryn Brady filed a civil lawsuit against Bobby Washington and his alleged employers, James Monaghan and Monaghan Properties, Inc., owner of a French Quarter bar. She alleged that Mr. Monaghan and his company were vicariously liable for the action of Mr. Washington, whom Ms. Brady claims brutally attacked her near the Mississippi River in New Orleans on March 19, 1998.

The Monaghan defendants filed a motion for summary judgment, essentially arguing that Ms. Brady failed to offer any evidence to prove that Mr. Washington worked at Monaghan's bar. On December 19, 2000, the trial court granted summary judgment in favor of the defendants, finding that Ms. Brady had failed to satisfy her burden of proof in the summary judgment proceeding. In Brady, 2001-0983, we affirmed the trial court's

grant of summary judgment in favor of the Monaghan defendants.

Meanwhile, on March 12, 2001, the Monaghan's insurer, Unionamerica, who was brought into the lawsuit as a third party defendant, filed a motion for summary judgment, seeking dismissal from the lawsuit. Unionamerica argued that the trial court's dismissal of its insured, the Monaghan defendants, by summary judgment, precluded coverage under its insurance policy. Unionamerica also argued that an assault and battery exclusion in its policy prevented it from being responsible for defense costs in the lawsuit.

On June 5, 2001, the trial court rendered the following judgment:

. . . the Motion for Summary Judgment of Unionamerica Insurance Company Limited is **GRANTED**, and Unionamerica Insurance Company Limited is hereby **DISMISSED** from this action, without prejudice, and suit against Unionamerica Insurance Company Limited may be re-filed if the Louisiana Fourth Circuit Court of Appeals reverses the judgment dismissing James Monaghan and/or Monaghan Properties from this litigation

Admitting to acting out of an abundance of caution, the Monaghan defendants appealed the June 5, 2001 judgment. In their appeal, the Monaghan defendants argue that the trial court erred in granting summary judgment to Unionamerica because the summary judgment they had obtained was currently pending before this court, rendering Unionamerica's

request for summary judgment premature. The Monaghan defendants also contend on appeal that the assault and battery exclusion of the Unionamerica policy does not preclude coverage in Ms. Brady's lawsuit.

Because of our decision in Brady, 2001-0983, the Monaghan's arguments in the present appeal are moot. Nevertheless, their arguments would be without merit anyway because the trial court's judgment was without prejudice and explicitly allowed the Monaghan defendants to bring Unionamerica into the lawsuit again if this court reversed the summary judgment it had obtained. In other words, the Monaghan defendants were in no way prejudiced by the trial court's judgment. Moreover, in rendering its judgment, the trial court was not ruling on policy exclusions, an issue which we believe could have been brought up in the event Unionamerica was brought into the suit again.

We therefore affirm the trial court's June 5, 2001 judgment. Because the Monaghan defendants have been dismissed from the suit on summary judgment, the trial court properly dismissed their insurer from the suit on summary judgment. The two judgments are consistent and proper.

AMENDED, AND AS AMENDED, AFFIRMED

