

Amutha Valli d/o Krishnan v Titular Superior of the Redemptorist Fathers in Singapore and  
Others  
[2009] SGHC 35

**Case Number** : Suit 531/2006  
**Decision Date** : 13 February 2009  
**Tribunal/Court** : High Court  
**Coram** : Lee Seiu Kin J  
**Counsel Name(s)** : Ragbir Singh Bajwa and Anuradha Tiwary (Bajwa & Co) and Raj Singh Shergill (Lee Shergill Partnership) for the plaintiff; Tito Isaac and P Padman (Tito Isaac & Co LLP) for the first and second defendants; Jimmy Yim SC and Darrell Low (Drew & Napier LLC) and Cosmas Gomez (Cosmas & Co) for the third defendant; Anthony Lee Hwee Khiam (Bih Li & Lee) and Cosmas Gomez (Cosmas & Co) for the fourth, eighth and tenth defendants; Denis Tan and George John (Toh Tan LLP) for the fifth, seventh and ninth defendants  
**Parties** : Amutha Valli d/o Krishnan — Titular Superior of the Redemptorist Fathers in Singapore; Simon Tan Hon Lip; Jacob Ong Siong Teck; Nasrom Bin Abdullah; Francis Chian Kim Fook; Agnel D'Souza; Koh Cheng Swee; Benny Tan Chin Beng; Choo Joke Li; Cheong Lai Meng

*Tort – Assault and battery – Whether defendants' acts caused plaintiff to apprehend infliction of immediate, unlawful, force on her – Whether there was actual infliction of unlawful force on plaintiff – Implied consent of plaintiff's son, daughter, and family friend – Doctrine of necessity – Whether physical force applied was reasonable*

*Tort – False imprisonment – Whether plaintiff had been prevented from leaving premises*

*Tort – Negligence – Whether defendants owed plaintiff duty of care – Whether there was sufficient legal proximity between plaintiff and defendants for duty of care to arise – Whether there were policy considerations to negate imposition of duty of care – Whether defendants had breached duty of care – Whether plaintiff had suffered damage arising from such breach*

13 February 2009

Judgment reserved.

Lee Seiu Kin J:

1 The plaintiff claims against the defendants for damages, including special and aggravated damages, for trespass to her person by way of assault and battery, false imprisonment and negligent acts of the defendants. The acts upon which the plaintiff bases her causes of action are alleged to have been committed by the second to the tenth defendants over the course of 2½ hours at a church on the night of 10 August 2004, sometime after 9pm. The plaintiff's claim against the first defendant is on the basis that the latter is alleged to be vicariously liable for the acts of the second and third defendants as they are its servants, agents or representatives and they had undertaken the said acts in the course of their employment or with its express or implied authority or consent.

### **The parties**

#### ***The plaintiff***

2 The plaintiff was born in 1956, the third child of a family of eight children. Her father was a technician in the Telecommunications Authority of Singapore ("TAS"). After completing her 'O' levels in 1972 the plaintiff joined Singapore General Hospital briefly as a student nurse but left after three

months to join the TAS as a telephone operator. She remained there until 1989, a total of 16 years. The plaintiff worked as a private tutor from 1990 right up to the day of the incident, the subject matter of this suit.

3 In 1977 the plaintiff married Suppiah Jeyabal ("Jeyabal") and they have two children, a son Jairaj Kumar Jeyabal ("Jairaj"), born in 1979 and a daughter, Subashini Jeyabal ("Subashini"), born in 1985. Jeyabal was employed by the TAS until he retired and at the material time he was a taxi driver. On the night in question he was at work and was not a participant in the events. Jeyabal is a Hindu. The plaintiff was brought up as a Hindu, but she converted to Christianity during the course of their marriage. Both the plaintiff and Jeyabal said that they were open-minded about religion and there was no religious tension in their home.

### ***The defendants***

4 The first defendant is a body corporate established by the Redemptorist Fathers Ordinance (Cap 374, 1985 Rev Ed) having jurisdiction, supervision, management and control of the redemptorist priests of the Church of Saint Alphonsus ("the Church") at 300 Thomson Road in Singapore. It is popularly known as the Novena Church. The second defendant, Simon Tan ("Tan") and the third defendant, Jacob Ong ("Ong") were, and are, priests belonging to the Redemptorist Fathers ("the Order"), one of the many Roman Catholic orders in the world. For historical reasons, neither the Order nor the Church falls under the jurisdiction of the Titular Roman Catholic Archbishop of Singapore. Tan was appointed to the office of Titular Superior of the Order of the Redemptorist Fathers of Singapore in 2002.

5 The fourth defendant, Nasrom Bin Abdullah ("Nasrom"), fifth defendant, Francis Chian Kim Fook ("Chian"), sixth defendant, Agnel D'Souza ("D'Souza"), seventh defendant, Koh Cheng Swee ("Koh"), ninth defendant, Choo Joke Li ("Joanna") and tenth defendant, Cheong Lai Meng ("Cherie") are lay members of the Church who were present at the Church on the night of 10 August 2004 when the events unfolded. The plaintiff had not served the writ on D'Souza and he is therefore not involved in the present trial. The eighth defendant, Benny Tan Chin Beng ("Benny") is not a member of the Church; he is the husband of a member, Susan Ng Ai Choo. Benny was at the Church to fetch his wife home but got embroiled in the incident.

### **The plaintiff's version of events**

#### ***Plaintiff's pleaded case in the statement of claim***

6 The statement of claim sets out three causes of action against the defendants: (i) assault and battery; (ii) false imprisonment; and (iii) negligence. The following facts were pleaded. On 10 August 2004 at about 10.30pm the plaintiff went to the Church with her son, Jairaj, and daughter, Subashini, and a family friend, Resham Singh ("Resham"). The statement of claim refers to them as the plaintiff's family members and I shall adopt the same expression. Jairaj had wanted to pray at the Church. While they were there, the plaintiff fainted. The priests, Tan and Ong, who were present, approached them and caused the plaintiff to be taken to a room in the Church to rest. However the family members were asked to leave the room and wait outside. Tan and Ong remained in the room with the plaintiff. Subsequently Tan emerged from the room and informed the family members that she was possessed. Tan then beckoned to the fourth to tenth defendants who had gathered outside the room. They went in and closed the door behind them. About ten minutes later, Tan came out of the room again and told the family members that the plaintiff was possessed by a spirit and that they would have to conduct an exorcism. No consent was sought from the family members nor was any consent given by them for the exorcism to be carried out on the plaintiff. Tan returned to the room and closed the

door.

7 The statement of claim alleged that the second to tenth defendants then conducted an exorcism, or what purported to be an exorcism, to rid the plaintiff of the spirit which they alleged had possessed her. This took place over about 2½ hours, during which time the plaintiff was prevented from leaving the room and from communicating with her family members, forcibly pinned to the floor, sexually violated by one or more male persons kneeling on her bare thighs, strangled, tormented by accusations of possession and repeatedly asked questions such as “who are you” and “tell me your name”. Throughout this time various defendants were reciting what appeared to the plaintiff to be passages from the Bible.

8 The statement of claim alleged that the plaintiff protested against these acts performed on her. However the second to tenth defendants refused to stop or pay heed to her protests. The family members were prevented from entering the room by a person, whom they could not identify, who stood guard outside the room. It was not until they heard the plaintiff screaming that Resham forced his way in. He found the plaintiff sprawled on the floor with Nasrom and Benny pinning her down. The plaintiff told Subashini that she wanted to go to the toilet but was prevented from doing so. When Resham insisted that she be allowed to go to the toilet, the plaintiff was permitted to do so but was accompanied by either Tan or Ong, and Joanna and Cherie. Subashini also went with her. At the toilet, Tan (or Ong) did not allow the plaintiff to close the door. This was done by Joanna and Cherie standing against the doorway of the toilet despite the plaintiff’s protestations. The plaintiff was forced to ease herself while being watched by Tan (or Ong) and Joanna and Cherie. The plaintiff then confronted one of the defendants (she was not certain if it was the fourth, fifth, sixth, seventh or eighth defendant) who had pinned her down. He responded by verbally abusing her and threatening to break her head. The plaintiff demanded that Tan call the police and an ambulance, but he refused to do so. The plaintiff and her family members were asked to leave the Church. On their way out, they were further subjected to verbal abuse by one of the fourth to eighth defendants.

### ***Plaintiff unable to be cross-examined***

9 There were four witnesses who gave evidence on behalf of the plaintiff on the events of the night of 10 August 2004. They were the plaintiff’s son, Jairaj (aged 25 at the time) and daughter Subashini (then aged 19 years), Resham and the plaintiff herself. However there was no substantive cross-examination of the plaintiff due to her ill health. She was unable to give evidence on the first day of the trial, her doctor having certified that she was in ill health and not fit for cross-examination. The trial proceeded with the evidence of the other witnesses called by the plaintiff. She first went into the witness box late in the afternoon of 31 October 2007, the third day of the trial. In the midst of the examination-in-chief she broke down and I adjourned the trial to the morning of the following day, 1 November 2007. However her condition did not improve and she broke down eight times as her counsel, Mr Bajwa, read through her affidavit evidence-in-chief (“AEIC”) for her to confirm her evidence, and another three times when she was asked to identify the various defendants. Mr Isaac, counsel for the first defendant was the first to cross-examine her. But within minutes, she began giving incoherent answers, appearing confused and to have forgotten important events such as the date of birth of her only daughter. After a three-hour adjournment, her memory was no better and she was unable to recall the name of her son’s primary school. She said that she was the fifth child in her family although she had said in her AEIC that she was the third. She appeared to have forgotten how many siblings she had. She then broke down upon mention of her late father. As her answers to questions about her childhood grew more incoherent, she started to stray into the events of the night of 10 August 2004. Mr Isaac managed to steer her back to the issue of her background and for a short while her answers were relevant, but she soon manifested difficulty recalling various matters and her answers again became incoherent. When she began to make statements that indicated that

she could not recall some of the events set out in her AEIC, I adjourned the trial and requested to see counsel in chambers. There, I indicated to Mr Bajwa that he should seek the opinion of the plaintiff's doctors as to her ability to give evidence as she was patently incoherent at times in the witness box, which could be a side effect of the medication she was taking.

10 The plaintiff never returned to the witness box. On 14 November 2007 Mr Bajwa informed me that the plaintiff was examined by her doctor on 6 November 2007 and had been admitted to hospital on 9 November 2007. Her doctor had certified that she was unfit to give evidence in court. Although the trial was adjourned for an unusually long period of seven months in the hope that the plaintiff would have a better chance of recovery for her to give evidence, this did not turn out to be sufficient. On 23 June 2008, Mr Bajwa applied for the cross-examination of the plaintiff to be dispensed with. As expected, counsel for the defendants objected to this and applied for her AEIC to be struck off. I instructed counsel to make that point in submission. In their written submissions, the defendants pointed out that the plaintiff had no difficulty in confirming her AEIC when Mr Bajwa read it out to her (although she broke down several times). Yet within minutes into her cross-examination she was unable to answer questions coherently. The defendants also questioned the decision of the plaintiff's doctor to certify her unfit to be cross-examined, as it was based on what the defendants submitted was a flawed diagnosis that the plaintiff was suffering from Post Traumatic Stress Disorder ("PTSD"). Finally the defendants referred to O 38 r 2(1) of the Rules of Court (Cap 322, R5, 2004 Rev Ed) which provides as follows:

... at the trial of an action commenced by writ, evidence in chief of a witness shall be given by way of affidavit and, unless the Court otherwise orders or the parties to the action otherwise agree, such a witness shall attend trial for cross-examination and, in default of his attendance, his affidavit shall not be received in evidence except with the leave of the Court.

However this provision leaves it to the discretion of the court whether to admit the AEIC of a witness who did not attend trial for cross-examination. In the circumstances, in view of the distress manifested by the plaintiff in court and the opinion of her doctor as to her state of health, I was of the view that her AEIC should be admitted and the evidence therein be considered along with all the other evidence before me. The defendants of course submitted that little weight should be given to her AEIC as she was not cross-examined on it. In my view the lack of cross-examination is but one of factors that I have to bear in mind, along with all the other circumstances of the case.

### ***Evidence of the plaintiff's witnesses***

11 The evidence of the plaintiff and her witnesses pertaining to the events of the night in question may be summarised as follows. On 10 August 2004 the plaintiff, Jairaj and Subashini met Resham for dinner at Shahi Maharani Restaurant at Raffles City. Jairaj had wanted to consult Resham in relation to his university studies. They left the restaurant around 10pm in a taxi. On the way home, Jairaj said he wanted to pray at the Church before he reported for national service in two days' time. They got off the taxi at the Church and proceeded up the flight of stairs that leads to St Gerard's Tribune at the right side of the Church where there was a statue of Mother Mary. Upon reaching there the plaintiff felt tired and fainted. Resham managed to cushion her head as she fell. The three of them went to fetch water from the nearby cisterns to splash on the plaintiff's face to try to revive her. Then two men appeared, whom they later identified as Tan and Ong. Resham told them that the plaintiff was not felling well and had fainted. The two men suggested that the plaintiff be taken inside the Church premises to rest. By this time the plaintiff had regained consciousness although she was still in a daze. Resham agreed to their suggestion and the plaintiff made her way to the Pastoral Centre (some 20 metres away) assisted by her family members. Tan led them to a room in the Pastoral Centre and seated her on a couch. Tan or Ong asked whether the plaintiff had been

baptised, to which Jairaj replied in the positive. The rest of them were asked if they had been baptised and they said no. They were then asked to leave the room and wait outside. Resham asked for the reason and Tan and Ong explained that they wanted to say a short prayer and that the plaintiff's family members should wait outside as they were not baptised. The door was closed behind them after they got out of the room.

12 About five minutes later, Tan came out of the room, identified himself and said that the plaintiff was possessed. The plaintiff's family members were stunned to hear this. Resham suggested calling an ambulance but Tan ignored him and went back into the room. Tan beckoned to the group of people who had gathered outside the room to go inside and around eight of them followed him, closing the door behind them. Resham grew anxious and told Jairaj to call his father immediately. However Jairaj could not do so as there was no mobile phone reception inside the Pastoral Centre.

13 About 45 minutes later Tan and Ong came out of the room. Resham asked them what they had meant when they said the plaintiff was possessed and they explained that it was a common occurrence during the "ghost month". They said that she was possessed by the spirit of a dead soldier and it was very powerful and dangerous. They told the family members that they would "conduct an exorcism with deliverance and prayer". Resham and Jairaj told them not to do anything until Jeyabal arrived but Tan and Ong told them not to worry and went back into the room.

14 At this point the family members became worried. Resham told Jairaj and Subashini to go outside the Pastoral Centre to call their father, but they found that they could not get out as the main door was locked. Resham himself tried to call Jeyabal but found that his mobile phone had no reception inside the Pastoral Centre. An elderly Indian man was guarding the door to the room and he began to hand out some prayer cards. Some people outside the room began to sing hymns.

15 After a long wait, the family members heard the plaintiff scream. Resham then barged into the room, brushing aside the Indian man guarding the door. Upon entering the room the family members saw the plaintiff sprawled on the floor and held down by several men. Two women were chanting from the Bible. When the plaintiff saw her family members, she told them that she wanted to go to the toilet but the people in the room would not let her. Tan said that she would not be allowed to do so unless she said the word "Jesus". Tan proceeded to say to the plaintiff: "In the name of Jesus, tell us who you are first". The plaintiff replied that she did not know what he meant and asked to go to the toilet. She told Resham that this was what they had been doing to her. Resham then demanded that she be set free and allowed to use the toilet. The plaintiff was then released. She struggled to her feet with the help of Subashini and left the room for the toilet which was situated at the end of the corridor. She was accompanied by Subashini. Tan asked two of the women in the room to go with her. Tan also went along. At the toilet, Tan did not permit the door to be closed as he wanted to hear her urinate. The two women stood at the door to prevent it from being closed. Subashini tried to comfort the plaintiff by standing in front of her to block any view of her in the toilet. The plaintiff saw a man who was beside Tan peering at her as he smoked a cigarette. She found herself unable to urinate and got out of the toilet.

16 On the way back from the toilet, the plaintiff encountered a man who had molested her in the room by touching her bare thighs and told him she would report him to the police. He told her that he would break her head. Resham and Jairaj, who had been waiting outside the room and trying unsuccessfully to contact Jeyabal, heard the commotion at the toilet. The plaintiff asked for the police and an ambulance to be called but to no avail. The door to the Pastoral Centre was opened by then and people were leaving. The plaintiff then saw Nasrom and said: "How dare you strangle me", to which he replied with an expletive and a challenge to fight outside the Pastoral Centre. Resham asked Tan for his name and identity card number. Tan wrote his name on a piece of paper but refused

to provide his identity card number. The plaintiff and her family then left the Church.

17 As the family members were not present in the room for most of the time, the plaintiff was the only person who could relate what happened inside. In her AEIC the plaintiff stated that she was disoriented when she was led to the room. She recalled she lay on the floor and Ong splashed water on her face while Tan waved a cross at her and said "I command all evil spirits in the name of Jesus to free her right now". The other people in the room responded "In the name of Jesus, Amen". The plaintiff recounted what happened in the following two hours or so in paras 25 to 31 of her AEIC:

25. Simon Tan then began to talk to me. To the best of my re-collection, the conversation was as follows:

Simon – "Why did you come here?"

Valerie – "My son wanted to pray as he is returning to National Service"

Simon – "Who are you?" "Tell me your name"

V – "I am Valerie"

S – "Which camp is your son returning to?"

V – "I think Nee Soon Camp"

S – "Are you from Nee Soon Camp too?"

V – "Not me, my son is"

S – "I received a message that there is an evil spirit in you and an exorcism has to be conducted"

V – "Why?" "Why you say like this?" "I don't need prayer. I want to leave"

S – "No, we can't allow you. We have to conduct a prayer to save you from all evils"

I stood up and headed towards the door where Jacob Ong was standing. 2 men in the group held me by the arms to restrain me, I pushed them away and another 2 men joined them and held my wrists. I told them I would call the police.

26. I wriggled my body and pushed and tried to break free but the 4 of them managed to pin me down onto the floor. Simon Tan recited some commands and I kept shouting at him to let me go and that I would call the police. He called me a liar and said that he would not listen to me and that I could not deceive him.

27. The commands of Simon were interchangeable and spoken over the 2 hours to the following effect:

'I command and bind the evil spirit in the name of Jesus to release her'

'I command you evil spirit to go back where you came from'

'Who are you?' 'What is your name?'

'Shut your mouth, you liar, I know you are not her. You can't deceive me as I am the servant of god'

'I will not let you rest until you leave her'. 'I will destroy you in the name of Jesus' 'Cleanse Valerie with Jesus blood'. 'Hallelujah praise the lord, Destroy the evil in her right now!' 'Leave her soul'

'If you are Valerie, pray with us. I love Jesus, I accept Jesus as my saviour. I want Jesus to cleanse my body with his precious blood'.

28. I pleaded with them repeatedly to release me and told them that I was not an evil spirit. I requested to see my family members. At one point I tried to break free by lifting my knees. 1 man then knelt on my thighs and placed his hands on my upper thighs. I felt violated and dirty as if I had been molested. It was also very painful where the man was kneeling on my thighs. I pleaded to Simon Tan that I was in great pain but he did not respond except to show me a cross and ask what it was and attempt to get me to hold it.

29. I did not want to hold the cross and Simon pinned it to my right hand. It was painful and I told him again that I wanted to go. Simon Tan took something white out from a box and asked me what it was. I did not know. He then said if I was baptized then I should know. I said I was not sure. Simon then stuffed the white item in my mouth forcibly without any warning. I spat it out immediately. As I spat it out, a Malay looking man, who had been seated on the couch, leaned towards me and strangled me. He said 'you stay still fucker and obey the commands or else I will kill you'. His grip was so tight that I though[t] I was going to die. After a couple of seconds, he eased his grip.

30. At this point I screamed for Sham but the Malay looking man pushed my lower jaw upwards. I felt very weak and tired. I was very thirsty and requested for some water. I also requested an ambulance. The Malay looking man told me to shut my mouth. I turned to Simon and told him that I wanted to release myself. I told him my bladder was full but Simon did not believe I was Valerie and told me if I was her then I had to pray with him. We said a prayer together. The prayer was to the effect that: "I love Jesus, I accept Jesus as my saviour. I want Jesus to cleanse me with his precious blood."

31. After the prayer, I wriggled to break free. I told the Defendants to let me go as I wanted to urinate. The Defendants held on hard to try stop me from moving. Sham broke into the room at that point and demanded they let me go. I told him that I needed the toilet but they wouldn't let me go. Sham then told them to let me go to the toilet. Simon instructed 2 ladies to accompany me to the toilet. I was in great pain and had difficulty getting up. My daughter assisted me.

18 The plaintiff's version of events, if true, would support her claim against the defendants in false imprisonment as they had prevented her from leaving the room for some 2½ hours that night. It would also support her claim in the tort of assault and battery as they had used threatening words towards her and had restrained her, and even strangled her. In respect of the third cause of action, in negligence, the plaintiff claimed that arising from the incident, she suffered not only physical injury from the physical treatment inflicted on her, but also mental and psychological trauma in the form of PTSD. The plaintiff's case is that the defendants had breached their duty of care towards her in that they had failed to ascertain that her condition was no more than a fainting spell and did not procure proper medical assistance for her. Instead they had mistakenly thought that she was possessed and proceeded to carry out "an act of exorcism or the like". The words in parenthesis are quoted from the statement of claim. This appears to refer to the acts carried out by the defendants on her that night that were intended by them to drive away the spirits they believed were possessing her. The

statement of claim then alleged that the first defendant failed to put in place adequate procedures to ensure that its servants or agents conducted such acts in a safe and proper manner. In the event, the rest of the defendants carried out the acts against the plaintiff in a manner that breached their duty of care towards her. The plaintiff called two medical experts to support her case that she suffered from PTSD caused by the events of that night.

## **The defendants' version of events**

### ***Defendants' pleaded case in their defences***

19 The defendants' version of events, as set out in their pleadings is along the following lines. Sometime after 9.00pm on the night of 10 August 2004, the plaintiff, accompanied by her family members, came to the Church. Jairaj approached Ong, introduced himself as the plaintiff's son and asked if he was a priest. When Ong replied in the affirmative, Jairaj asked Ong to assist his mother, who he said was possessed. Ong went up to the plaintiff, took a look at her condition and decided to seek help. He told the family members that he would return. Ong located Tan, who was in his room about to retire for the night, and asked for his assistance. Tan immediately went to the part of the Church where the plaintiff was. This was about 10.30pm and the Church was already closed for the night, though there were a number of worshippers still about. Tan saw that the plaintiff was violently shaking the grille leading to the prayer hall of the Church. The plaintiff's daughter and the 'brother' both informed Tan that the plaintiff was possessed and was suicidal. Tan requested the plaintiff to accompany him to a room in the Church's Pastoral Centre, known as the Francis Seelos Room ("the Room"). The plaintiff 'marched' into the Room unassisted, accompanied by her family members. The Room was a small room and had a door with a window, from which anyone could look inside.

20 When the plaintiff entered the Room, she became violent and her own family members physically restrained her of their own volition. Ong joined them at this point. Tan called for the assistance of the fourth to the tenth Defendants and they entered the Room. The plaintiff's family members stood just outside the Room in the passageway. This was because the plaintiff's family members had said that they were not Catholics and so their participation would not be useful. Furthermore the Room was rather small. Tan therefore requested them to remain outside.

21 The defendants' position is that neither the plaintiff's 'brother' nor her children were at any time prevented from entering had they so wished, as the door of the Room was not locked. They were aware of the activities inside the Room. In fact the plaintiff's 'brother' did enter the Room on more than one occasion (at Tan's invitation) and spoke to the plaintiff. The plaintiff's daughter also entered the Room on one occasion and stood to the side and watched. At no time did the plaintiff's family members make any protest. Tan, with the assistance of Ong, prayed over the plaintiff. The defendants said that the plaintiff agreed to, and did, pray along with the second and third defendants. The fourth to the tenth defendants helped in the recitation of prayers. The plaintiff's 'brother' and daughter also sat with other worshippers outside the Room and prayed with them.

22 When the plaintiff expressed a need to relieve herself, she was permitted to do so. Tan requested the ninth and tenth defendants to accompany and assist her. The plaintiff's daughter was also asked to go along. Tan remained in the Room.

23 At the end of the prayer session, the plaintiff became abusive. She shouted at her family members and hurled vulgarities at the other worshippers. But the plaintiff's 'brother' and daughter personally thanked Tan for his help. Just as they were about to leave, the plaintiff's 'brother' requested Tan for his name and identity card number. As the plaintiff continued to be abusive, she and her family members were then asked to leave the Church.



## ***Evidence of the defendants' witnesses***

24 On behalf of the defence, 15 witnesses were called to give evidence on the events of that fateful night. Of these, eight were defendants in the suit, namely the second to fifth and seventh to tenth defendants. The remaining seven were Francis Tan Chye Hian ("Francis"), a Redemptorist Brother and the following church members who were present that night: Trevor Fernandez ("Trevor"), Goh Poh Geok ("Poh Geok"), Milly Chia Lee Im ("Milly"), Lizette Vaz ("Lizette"), Geraldine Tresia Tan ("Geraldine") and Susan Ng Ai Choo ("Susan"). The defendants' witnesses each gave accounts from their respective perspectives. Some had a better recollection than others. A few of them said that they were very frightened during the incident and the effects continued after that. They said that as a result they were unable to recall fully, or in the correct sequence, the events they had observed. I summarise hereafter what may be pieced together from their collective testimonies.

25 The first person to encounter the plaintiff was Francis. He was in the midst of locking up the gates at the St Gerard's Tribune at around 10pm when he heard a man, whom he later identified as Resham, call out to him. Resham was holding the arm of the plaintiff and asked him if there was a priest around. Francis replied that the priests had retired for the night and suggested that they return the following day. Resham then said "she is possessed", which shocked Francis. Upon turning around, Francis saw Ong coming in his direction and called out to him. Francis told Ong that Resham and the plaintiff were looking for a priest for help. Seeing that Ong was attending to them, Francis went about his task of locking up the remaining gates of the Church. He confessed that he was taken aback by the encounter and did not want to get involved in it.

26 Ong, the third defendant, was the second person to encounter the plaintiff. He had earlier attended a farewell party at the Pastoral Centre for the sixth defendant, D'Souza, who was migrating to Australia. Thereafter he attended a meeting held in another room at the Pastoral Centre. The meeting ended at around 10pm and as Ong was leaving the Pastoral Centre, the receptionist directed a young Indian man, later identified as the plaintiff's son, Jairaj, to him. Jairaj told Ong that he needed to see a priest urgently. Upon Ong identifying himself as a priest, Jairaj told him that his mother was "possessed and suicidal" and requested Ong to pray over her. The plaintiff's daughter, Subashini, was with Jairaj. After a short exchange, Jairaj led Ong to the St Gerard's Tribune of the Church, where Ong met Francis and saw Resham and the plaintiff there.

27 At para 15 of his AEIC, Ong related the initial encounter with the plaintiff:

I noticed the Plaintiff was kneeling on the floor and holding on to the grille gates leading to Saint Gerard's Tribune. Next, the Plaintiff began creeping on the floor. She lay on the floor facing down with her arms stretched out in front of her head and moving in a snake-like manner. I was no more than 2 metres away from the Plaintiff and was taken aback from what I saw. I thought that it was very strange for the Plaintiff to be moving in way she did.

Jairaj told Ong that Resham was the plaintiff's brother and Resham confirmed it. Resham told Ong that the plaintiff was possessed by the spirit of a soldier. Ong described what happened in para 17 of his AEIC:

I asked the Plaintiff's 'Brother' what was wrong with the Plaintiff. He informed me that the Plaintiff was possessed with the spirit of a soldier. But he said he was able to command the spirit. To prove this, the Plaintiff's 'Brother' confidently gave the command "*Soldier stand up*". Upon hearing this, the Plaintiff ceased creeping and moving in a snake-like manner on the floor and stood up straight. The Plaintiff's body was stiff and she was looking straight ahead. Next, the Plaintiff's 'Brother' gave the command, "*Soldier march*". The Plaintiff immediately obeyed this command and

began marching – swinging her left arm forward when her left leg took a step forward and swinging her right arm forward when her right leg took a step forward. She marched a few steps forward and then went back to creeping and moving in a snake-like manner on the floor.

28 Resham then asked for Ong's help to pray for the plaintiff. Ong decided to get his anointing kit and to look for Tan to help him. He told the family members that he would return shortly and went off to his room at the priests' quarters. Ong explained that an anointing kit was what Catholic priests usually carry when visiting patients in hospital and praying for them. The items in the kit include a stole, holy water, various oils, a prayer book, a crucifix, corporeal, an empty communion pix and a purificator. He went to Tan's room and found him there. Ong told him that there was a woman behaving strangely and moving like a snake at the right wing of the Church. Tan agreed to assist Ong and went off in the direction of the Church. Ong went on to his own room to get his anointing kit.

29 The second defendant, Tan, was the third of the defendants' witnesses to encounter the plaintiff. He had changed to his shorts and T-shirt and was about to retire for the night when Ong burst into his room saying that there was a woman behaving strangely at the St Gerard's Tribune. Ong could not tell him exactly what was wrong, and went off to his room to get his anointing kit. Tan immediately ran towards the Church. When he got to the St Gerard's Tribune, he found the plaintiff violently shaking the grille gate and shouting. Resham, Jairaj and Subashini were standing nearby watching her. Tan then introduced himself as a priest. He described what happened next in paras 31 and 32 of his AEIC:

31 I had a short conversation with the man and the girl who were with the Plaintiff. I did not speak with the boy at this time or at anytime throughout that night. During the conversation, the Plaintiff was still violently shaking the grille gate and shouting incoherently. As far I can recall, the conversation was as follows:

Me *Who is she?*

Man *She is my sister.*

Girl *She is my mother.*

Me *What's wrong with her?*

Man *She is possessed by a soldier spirit. Please help us. Please pray for her.*

Me *Why do you say that?*

Man *She has been this way for the last two weeks. She has been behaving like a soldier, you can command her and she would listen.*

Me *Where was she before coming to the Church?*

Girl *We were having dinner in a restaurant. All of a sudden my mother behaved strangely and shouted at everybody. We could not stop her. So we brought her here for help. A few weeks ago she tried to jump down from the flat, we managed to stop her.*

Me *How do you know she is possessed by the soldier spirit?*

Man *I can command her if you don't believe. "Soldier, Stand still!"*

32 On hearing this command from [Resham], the Plaintiff stopped shaking the grille. She turned around to face [Resham], and saluted him and stood still. Her eyes were fixed looking straight at him.

[emphasis in original]

30 Tan said that he decided to assist in the form of prayer as the situation was not normal and the family members appeared to be desperate. Tan explained further in para 34:

From time to time, people do come or are brought to the Church, saying they are possessed or charmed, and request prayers and blessings. Priests of the Novena Church are used to such requests for prayer, and usually oblige with prayer. It is not my practice, nor, as far as I know, that of any other priest of the Novena Church to turn away any applicants for spiritual help.

31 Tan said that Resham then gave the command "Soldier, attention!" whereupon the plaintiff saluted Tan and said "Yes, sir". Tan said to the plaintiff "Follow me, soldier". The plaintiff again said "Yes, sir". Tan then led them to the Pastoral Centre. The plaintiff marched behind him, followed by her family members. They filed past a group of church members gathered outside and in the Pastoral Centre and went into the Room. At this point Ong joined them with his anointing kit. Resham and Subashini told the priests that they were having dinner in a restaurant when the plaintiff became hysterical and they could not calm her down. So they brought her to the Church for help. Tan asked the family members if they were Catholics. They replied that they were not but the plaintiff was. At this point the plaintiff, who was seated on a chair, was agitated and violently swinging her arms. Tan told the family members that he and Ong would pray for her. They proceeded to do so, with Tan standing beside her and placing his right hand on her forehead. As Tan prayed, Ong sprinkled holy water on the plaintiff to bless her. Suddenly the plaintiff started to shout and wave her arms and kick violently. Resham, Jairaj and Subashini reacted by firmly holding her arms. Tan and Ong continued praying for around 15 minutes, and for most of that time the plaintiff was shouting and struggling, with her family members holding on to her arms. As the plaintiff's struggling grew more violent, Tan decided to get more help to pray for her. Tan also saw that her family members were growing tired and he wanted to get others to help restrain her, so Tan stepped out of the Room and approached some church members to ask for volunteers. The other six defendants, two women and four men, volunteered, namely Joanna, Cherie, Nasrom, Chian, D'Souza and Koh ("the volunteers"). They followed him into the Room.

32 Tan said that when he returned to the Room, the family members were still holding on to the plaintiff's arms, but she was calm. He said that as the Room was rather small and the family members, not being Catholics, could not pray over her, he told them to wait outside. They did so without protest. Tan emphasised that the door to the Room was not locked and he did not instruct anyone to guard it or prevent the family members from re-entering. He said that Resham and Subashini frequently came in and went out of the Room.

33 Tan said that they started praying over the plaintiff. He saw Resham looking in through the glass window of the door. The plaintiff was seated and nobody held on to her. Tan placed his right palm on her head and Joanna placed her hand on her shoulder to show support. Ong sprinkled holy water and waved the cross at her. In the midst of this the plaintiff became violent and hysterical, shouting obscenities and kicking and spitting. Then she tried to strangle herself. Tan gave instructions to restrain her. Cherie and Joanna tried to hold her hands to prevent her from strangling herself but were not strong enough. The plaintiff then slid off the chair onto the floor. Tan asked for a cushion for her head. Again the plaintiff placed her right hand on her throat to strangle herself. Tan pulled it away, helped by one of the volunteers. All the time the plaintiff was kicking hard. On Tan's instruction, she

was restrained to prevent her from hurting herself. The prayers continued for about 15 minutes after which the plaintiff calmed down and stopped struggling. The people restraining her released their grip. The plaintiff then sat up and knelt on the floor. What followed is described by Tan in paras 63 to 65 of his AEIC:

63 She then pointed her fingers towards her chin and kept saying "*My name is Koh Chee Meng*". *She mentioned three or four times this name.* I do not know who Koh Chee Meng was, and whether I have spelt the name correctly. The Plaintiff was very clear in her articulation. The Plaintiff then appeared to demonstrate to me how she committed suicide in an Army camp. She acted out as if she put an army rifle to her chin and fired the rifle. Around this time, the Plaintiff's brother and her daughter came into the Room and stood to one side watching.

64 The Plaintiff had been speaking to me in what I would describe as normal tones. But what was strange to me that suddenly, her voice changed and sounded like a male voice, nothing like her own.

65 My conversation with the Plaintiff (as best as I can recall) went something like this:

Me *Who are you?*

Plaintiff (in a male voice) *I am 'Koh Chee Meng'. She repeated the names several times. I want my helmet.*

(She asked for her helmet four or five times. Her brother responded to Fr. Jacob that he could go back and take the helmet and haversack. I and Father Ong decided it was not necessary. At this time the Plaintiff was sitting down on the floor, not kneeling.)

Me *Why do you come back?*

Plaintiff (in a male voice) *I want to revenge. I killed my officer – he is a bastard, he is a big bully, and I killed him. And after killing him, I killed myself. I want to kill her (the Plaintiff) and everybody. I want my helmet. Who are you?*

Me *I am a priest.*

Plaintiff (in a male voice) *Are you really a priest?*

Me *Yes, I am. (Some of the others in the Room affirmed that I was a priest. I specifically remember hearing Joanne's voice)*

Plaintiff (in a male voice)      *Will God forgive me for what I had done?*

Me      *Yes, God will forgive you. I assure you.*

Plaintiff (in a male voice)      *How do you know? Can you promise me that God will forgive me?*

Me      *I promise you that God will forgive you. You must repent. You must leave her (the Plaintiff) now. I will pray for your soul to be at peace.*

[emphasis in original]

34 At this point Tan resumed praying for the plaintiff, assisted by Ong and the volunteers. Tan said that after a while the plaintiff calmed down and regained her normal voice. Resham and Subashini were still in the Room and Resham told them that the plaintiff had been behaving in this manner for the past two weeks. The plaintiff was assisted up from the floor onto a chair. And then, in the words of Tan at para 70 of his AEIC:

Then suddenly, the Plaintiff slid down onto the floor again. This time, she wiggled about in a way that I honestly thought she was slithering like a snake. She was facing the floor. When this happened, without any request by me or anyone else, the Plaintiff's brother and daughter left the Room. She was moving on a floor like a snake with the two hands clasped together above the head. She was moving around the room ...

35 Tan asked some of the volunteers to help the plaintiff up onto a chair. When they tried to do so, she became abusive and violent. So they left her on the floor and she calmly remained there for about ten minutes. They tried again to get her up but when she was turned around and lying on her back she glared at them and started to kick out violently and hitting her hands hard on the floor. Tan instructed the volunteers to hold her to prevent her from getting hurt. Tan, Ong and the volunteers resumed their prayers in earnest while holy water was sprinkled on her and some of them sang hymns. However the more intense they prayed the stronger and more violent the plaintiff became. She also regained her male voice and shouted vulgarities at them. At this time the eighth defendant, Benny, came into the Room and he held on to her ankles. This went on for about 25 minutes before the plaintiff calmed down again. Tan left the Room to speak to her family members. He found Jairaj and Subashini just outside the Room. Subashini told him that in the previous two months the plaintiff had been behaving strangely and had tried to jump off her flat several times in a week. She would also behave like a soldier and kept saying "I want to kill you". This happened at night and they had to restrain her from jumping off. Subashini said that the plaintiff had been in depression for several months.

36 Tan then returned to the Room. The plaintiff was lying on the floor but she was calm. Tan joined the people in the Room as they continued praying for her. And then, in Tan's words at para 81 of his AEIC:

Within minutes, the Plaintiff started to slither around the Room like a snake again. No one held on

to her. She did not appear to be in danger of hurting herself or anyone. For a few minutes she kept moving like a snake. At one stage, she said some words in an Indian language. I did not understand those words. Agnel, who was by race a Tamil, understood what was said and told us that the Plaintiff had just announced in Tamil "*I am a snake spirit*". [emphasis in original]

37 The plaintiff then turned violent again and Tan asked the volunteers to restrain her. They managed to pull her up and get her to sit on a chair. What happened next is best left to be described in Tan's own words (at paras 83 to 92 of his AEIC):

83 Father Ong and I continued to pray. The Plaintiff was behaving strangely. Her eyes were rolling and she showed enormous strength. Suddenly, she spoke again in a male voice. As best as I can recall, there was the following conversation between me and her :

Me *Who are you?*

Plaintiff (in a male voice) *I am Lucifer.*

Me *Why have you come?*

Plaintiff (in a male voice) *You all have no power over me, I am Lucifer. (The Plaintiff spat at the cross). What is your name?*

Me *My name is Simon*

Plaintiff (in a male voice) *I curse you. You will die in two years' time. I will come and get all of you in two years' time.*

84 Father Ong and [I] continued to pray and sprinkle holy water on her from time to time and anointed her with holy oils. We read from the Bible. The Plaintiff was seated on a chair.

85 After a while, the Plaintiff became violent. She again tried to strangle herself. She was abusive, scolding everyone there. Cannot recall the exact words, except she said something like "*You are all going to die*" (in a male voice).

86 I asked the helpers to hold her again. While Father Ong and I continued to pray, the helpers were holding her. They did so for about 15 minutes or so. After about 15 minutes, the Plaintiff calmed down again and regained her normal voice.

87 Suddenly, she looked at me and asked me whether she could see her children. I said yes and looked up and saw the Plaintiff's daughter looking in at the window (on the door to the Room). I waved her to come in. The son also came in. The brother remained outside.

88 The Plaintiff then spoke with her daughter in a calm voice. As best as I can recall, the

conversation went like this:

Plaintiff        *Where am I?*

Girl             *We are in the Church.*

Plaintiff        *Where is my glass of wine?*

Girl             *Mummy, you have finished your wine in the restaurant.*

Plaintiff        *What's happened to me? Why am I in this room?*

G i r l            *We brought you here from the restaurant. These people helped you, they prayed for you.*

89 The Plaintiff was quite calm. She was seated on a chair. She was looking around the room.

90 Then I asked her to pray with me, the Lord's Prayer. This is a most important prayer for Christians. I started to recite the Lord's Prayer. Father Ong and some of the helpers joined me in the prayer. ...

91 The Plaintiff did not follow me praying the Lord's prayer. Her face changed again, she became aggressive with some noise but not violent. I could not understand what she was saying. Her daughter and son walked out of the Room. But no one held the Plaintiff. Father Ong and I continued to pray for another 10 minutes or so. The Plaintiff calmed down again.

92 The Plaintiff then said she needed to use the toilet. I said yes and I asked Joanna to follow her. I went outside to ask the plaintiff's daughter to follow her mother to the toilet and explained to her that her mother tried to strangle herself few times in the room, for her safety she should not be alone and not to allow her to lock the toilet door for fear that the Plaintiff might try and commit suicide. I had also asked Susan Ng to follow her but Susan said she was scared. And Cherie followed her.

[emphasis in original]

38 Tan and Ong remained in the Room to tidy up. According to Joanna and Cherie, they went with the plaintiff and Subashini into the toilet as they were concerned for her safety as she was unstable. It was a toilet for the handicapped and could accommodate all four of them. Joanna and Cherie stood near the door but left it ajar in case further help was required from other volunteers. While inside the toilet, the plaintiff kept scolding Subashini, Joanna and Cherie. After she got out of the toilet and as she walked along the corridor the plaintiff continued abusing them and the other volunteers with vulgarities. As she passed Nasrom, the fourth defendant, and Benny, the eighth defendant, she directed vulgarities at them. Nasrom lost his head and said "If I had the power of God, I will knock your head". When the plaintiff reached the lobby of the Pastoral Centre, she got involved in an altercation with Benny. Tan said that Subashini tried to calm her down and told her that the people in the Church had helped her, but the plaintiff told her to shut up. Resham also tried to pacify the plaintiff but was told off. The plaintiff kept shouting that she wanted to sue everyone there. Tan told the plaintiff to go home and her family members to take her home.

### **Analysis of the evidence**

39 The version of the plaintiff's witnesses and that of the defendants' witnesses agree only as to the

time, location and participants. In the most important aspects, they are in stark contrast.

40 The plaintiff's story is a chilling tale of late night abduction by fanatics bent on driving out imaginary spirits from her. She had gone to the Church, felt unwell there and had merely fainted. Out of nowhere, Tan and Ong appeared and, without rhyme or reason, brought her to the Room. They ignored the requests of the family members not to do anything to the plaintiff until her husband could get there. They subjected her to 2½ arduous hours of harassment and, at various points, assault and battery, being physically restrained and even strangled. All this time her family members were prevented from going into the Room to help her until, after more than two hours of the ordeal, Resham barged in upon hearing the plaintiff scream out. Seeing the state she was in, he insisted that she be released. Even then, some of the defendants continued to torment the plaintiff by forbidding her from closing the toilet door and an unknown man was peeping into the toilet as she tried to urinate.

41 The defendants' version of events is equally bizarre: the plaintiff had been brought to the Church by her family members who claimed she was possessed. They requested for a priest to pray over her. The plaintiff was then seen crawling on the ground like a snake. To prove she was possessed by the spirit of a soldier, Resham barked some orders to which she responded in military fashion. In that manner she marched into the Room. For the next 2½ hours or so, the defendants were taken through an ordeal in which they had to restrain the plaintiff who struggled violently, and even tried to strangle herself. The defendants saw the plaintiff manifest three personalities – a snake spirit, a soldier and a gruff male voice who claimed he was Lucifer, presumably the Biblical devil. To top it all, the said Lucifer delivered a chilling curse on those in the Room. Some of the witnesses said that they were traumatised by the events.

42 These two versions of the events of that night are so different that if one side is telling the truth, then the other side is brazenly lying. There is another possibility, that is, that the true story is somewhere in between and both sides did not tell the complete truth. But there is nothing in the evidence from which I am able to draw this latter conclusion. Considering the totality of the evidence before me, I accept the version of the defendants' witnesses. My reasons for this may be categorised under five headings: (i) demeanour and consistency; (ii) dubious evidence; (iii) contradiction with contemporaneous documents; (iv) attempts to conceal evidence; and (v) strong corroborating evidence.

### ***Demeanour and consistency***

43 I found the evidence of the defendants' witnesses to be consistent and the manner in which they answered questions in cross-examination to have the ring of truth. There were 15 witnesses who gave accounts of the events of that night. I accept that there is the possibility of collusion, and indeed Mr Bajwa obtained confirmation that Tan and Ong had seen some drafts of each other's AEICs beforehand. However their AEICs and those of the other 13, did not appear contrived. Indeed they contain minor differences in details, as can be expected in the circumstances where each is recollecting a traumatic experience from his or her point of view. Had there been collusion, the details would have been better matched. And although there were minor differences, the essential elements of the narrative were there, such as the snake-like movements, the marching soldier and Lucifer entering an appearance. More importantly, in such a complicated set of events unfolding over a period of more than two hours, it is very difficult for 15 witnesses to maintain their evidence, if it is fabricated, without tripping up when they are subjected to cross-examination by a very competent counsel.

44 In any case involving so many persons, different witnesses have different degrees of candour,



depending on their temperament and the matters each deems important. So in the case of Nasrom, he got into an altercation with the plaintiff as she was walking past him after she had left the toilet, and had uttered a threat against her. Nasrom had glossed over this in his AEIC. However he admitted it fully in cross-examination and was contrite when Mr Bajwa pointed out that such behaviour was shameful. Another witness who appeared to me to be a bit evasive was Benny, who was content to deny recollection of many matters. Chian was also another witness who could not recall much. But in his case he said that he was really afraid that night and had kept his eyes mostly closed throughout the night – given the circumstances, a not altogether unbelievable explanation.

45 The main dissatisfaction I had with the defence witnesses was their less than candid position about the nature of what they were trying to do that night. The defendants insisted that they were merely praying for the plaintiff, and by such prayer to invoke divine intervention to make her well. Mr Bajwa spent much time trying to get the defendants to admit that they were conducting an exorcism ritual to cast out the spirits but they stoutly refused to admit that. They maintained that what happened that night was not an exorcism because the Catholic Church required exorcisms to be sanctioned by the bishop. As there was no such sanction it was therefore not an exorcism. This appeared a rather circular argument to me, and it was really a question of semantics. What I thought Mr Bajwa really wanted to extract from them was whether they were engaged in an attempt to drive out whatever spirits they believed were possessing the plaintiff. I felt that he took a long time to do so, but Mr Bajwa eventually suggested that the defendants were not merely praying for her as they had characterised it, but actively engaging the spirits they believed were possessing the plaintiff by talking to them and commanding them to leave the plaintiff. The defendants, in particular Tan and Ong, refused even to concede this. But this does not sit well with their own evidence that they had spoken to the spirit of the dead soldier and to Lucifer himself - see paras 65 and 83 of Tan's AEIC, reproduced at [33] and [37] above.

46 With the benefit of being able to consider the trial in its entirety, I conclude that I had, in thinking that he was barking up the wrong tree when he was harping on whether the defendants were conducting an exorcism ritual, underestimated Mr Bajwa's astuteness. In my view, this had the effect of raising the defendants' guard to the extent that when he switched tack and asked whether they were engaging with the spirits, the defendants refused to concede to a characterisation that was patently clear from their evidence. It may well be also that the pre-trial publicity, in which the nature of the events was characterised as an exorcism, had caused the defendants to be more guarded in view of the fact that the Catholic Church has strict rules on the process. However, I was satisfied that the stubborn stand they had taken on this point did not detract from their evidence on the facts. They had readily admitted to restraining the plaintiff – but only to prevent her from getting hurt – and to talking to the manifestations of the spirits.

47 Whatever the label that is attached to the actions of the defendants that night is not directly in issue as there is no cause of action associated with such labels. The plaintiff is suing the defendants for false imprisonment, assault and battery, and negligence. These are founded on acts of keeping her in the Room against her wishes, physically restraining and strangling her and in tormenting her with words. It therefore does not matter that what they were doing to the plaintiff in the Room is labelled as an exorcism or engaging the spirits possessing her. What matters is what they were doing to the plaintiff in the Room and the circumstances under which those acts were carried out.

48 The performance of the defendants' witnesses stand in stark contrast to that of the plaintiff's witnesses of fact, namely Subashini, Jairaj and Resham. There were numerous attempts by the three of them to not only gloss over but hide embarrassing facts about the plaintiff's rather eventful life, as well as her relationships with the rest of her family and Resham. There were even instances where they changed their evidence during cross-examination.

49 In the witness box, Subashini came across as an intelligent young lady with a sharp mind and an equally sharp tongue. She was confident in her answers to the questions in cross-examination. However she had awkward moments with contradictions between her evidence and those of the other witnesses for the plaintiff. One instance pertained to her claim that she had a close relationship with her mother. When confronted with a doctor's record of the plaintiff complaining that her husband, son and daughter had beaten her and that Subashini had called her a "slut and prostitute", she admitted that not all was well and they had their quarrels. Her brother Jairaj was a little less confident in the box – I observed that he displayed nervous twitches which could be due to the stress of being cross-examined or to the fact that he had to maintain a story that was not true. However he appeared to be no less intelligent or articulate than Subashini, only less confident.

50 The greatest confidence was displayed by Resham, even in the face of contrasting evidence of the plaintiff and Subashini and indeed of his own evidence over the course of his testimony. Resham occasionally changed his evidence in cross-examination. For example, he at first said that he did not phone the plaintiff's husband, Jeyabal, while waiting outside the Room that night and said this was because he did not have Jeyabal's number. When counsel pointed out to him that this contradicted what he said in para 25 of his AEIC in which he affirmed that he tried to call Jeyabal with his mobile phone but failed as there was no reception in the Pastoral Centre, he said that he had obtained the number from one of the plaintiff's children to call him. However this glib reply does not detract from the fact that it contradicts his testimony that he did not try to call Jeyabal at all. Another instance related to the trips that Resham made to Malaysia and Australia with the plaintiff. He denied that he went with her on some of those trips, but had to admit them when confronted with evidence in their passports.

### ***Dubious evidence***

51 There were many dubious areas in the evidence of the plaintiff's witnesses of fact. The major ones are as follows.

52 Resham said that he had asked the taxi driver who brought them to the Church to wait while they accompanied Jairaj into the Church to pray. After the plaintiff fainted, he ran back to the taxi to collect his bag which was left in the taxi, paid the fare and let the driver off. This was before the two priests arrived on the scene, during which time Jairaj and Subashini continued with their efforts to revive the plaintiff with water. Resham disagreed that the most expedient thing to do would have been to carry the plaintiff to the taxi and proceed to the nearby Tan Tock Seng Hospital. He said that, not knowing her condition, it would be better to call an ambulance. However it should be noted that the family members had said that the plaintiff had merely fainted, a condition that Subashini had said they knew she had been suffering from at the time. Also Resham, who had cushioned her head as she fell, did not feel that the plaintiff's situation was so dire that he could not leave her side for a while in order to retrieve his bag and to see to it that the taxi driver was not terribly inconvenienced to have to wait longer than necessary. It is therefore puzzling that Resham considered the plaintiff not to be in a state to survive a short taxi ride to the hospital. Their evidence on this aspect is riddled with contradictions.

53 The evidence of Subashini, Jairaj and Resham, that they were somehow railroaded into the whole incident did not sit well with the personalities they manifested at the trial. They were articulate in the witness box and able to give as good as they took from counsel. They had the confidence of people who are intelligent and able to take charge of a situation, particularly in the case of Subashini and Resham. This is in stark contrast to the meekness that they appeared to display on the night in question in relation to a known condition of the plaintiff – her fainting spells. And it is difficult to believe that these same persons in the witness box, when they were prevented from going into the

Room, would have taken it lying down. They claimed that they tried to telephone Jeyabal but to no avail. In the first place, Jairaj was at least 24 years old at the time. It appears odd that he was not in a position to assert control over the matter and find a way to get out of the Pastoral Centre. Added to that is the passivity of Resham, who has an imposing physical stature and the bearing and intellect to match. It is just as puzzling that he did not do more than just comply with the orders of the Indian gentleman guarding the door to the Room, and did not instigate Jairaj to assert himself as the plaintiff's son. It might be more comprehensible if this indecisiveness had been momentary. But they remained in that state of helplessness for 2½ hours.

54 According to the plaintiff in her AEIC, she had been shouting inside the Room from a very early stage. She had said that there was a lot of struggling and she had been pleading with Tan to let her go. The point is that there was certainly a lot of noise emanating from the Room. Yet in all the more than two hours that the plaintiff was inside and the family members were outside, on all the occasions that they went up to the door of the Room and were prevented from going in, they did not hear anything untoward until the last scream that brought Resham into the Room.

55 The family members all said that while waiting outside the Room, they had attempted to call Jeyabal many times. But they did not succeed because there was no reception inside the Pastoral Centre on all three of their mobile phones. But when asked why they did not go out of the building to make the call, they replied that they tried to but found it was locked. They did not ask anybody to unlock the door nor try to find another exit. I find it difficult to understand their explanation that they did not try harder to get out of the building given their anxiety about the matter, particularly as time wore on. The meekness with which they accepted their being locked in is in stark contrast to the personalities they displayed at the trial. I should also add that the physical evidence appears to support the defendants' position that the door could be opened from the inside.

56 According to Jairaj, Subashini and Resham, they were prevented from going into the Room, a state of affairs that they accepted without challenge. They spent an anxious two hours or more outside the Room, wondering what was being done to the plaintiff. But they did not feel compelled to assert themselves until they heard the plaintiff scream. It was then that Resham took charge and barged in. He was shocked to see the plaintiff sprawled on the floor and held down by several men, one of whom had his knees on her thighs. Another man was holding her head down. Her skirt was turned up and the top button of her blouse was out. The plaintiff looked exhausted and traumatised. Resham was outraged by this and told the defendants "That's enough, let her go!". The defendants then released their hold of the plaintiff and Subashini helped her up and guided her to the toilet. Tan asked the two women in the Room to go with them. The evidence of the family members is that only Subashini went with them, and neither of the men followed despite the fact that, according to Subashini, Tan followed behind the women and at the toilet there was yet another man peering in. It is very puzzling that neither Resham nor Jairaj accompanied the plaintiff to the toilet in those circumstances.

57 Jairaj, Subashini and Resham claimed that there was a statue of Mother Mary at the St Gerard's Tribune where the plaintiff had fainted. However the physical evidence as well as the evidence of the witnesses of the defendants who were familiar with the Church showed that there was not and could not have been such a statue at that location.

### ***Contradiction with contemporaneous documents***

58 There are various parts of the plaintiff's evidence that contradict contemporaneous documents. A few of the major ones are as follows.

59 The plaintiff had stated in her AEIC that she was unable to urinate in the toilet as she was prevented from closing the door and was being watched by a man. Subashini also confirmed that the plaintiff had been unable to ease herself in the toilet. Indeed a large part of her claim for damages related to the difficulty that she had in urinating after this traumatic episode. This was what she had related to her psychiatrists, and it formed a major basis for their opinion that she had suffered from PTSD. However she had stated the contrary in a police report she made at 1.30pm on 11 August 2004, some 12 hours after she left the Church. The plaintiff stated the following, towards the end of that report:

Inside the toilet I requested to close [the door] but one of them disallowed. I just continued to relieve myself with one of the Chinese male standing watching. After relieving myself, they released me.

More importantly, the plaintiff had contradicted her evidence on this point in an affidavit ("the pre-action affidavit") she swore 13 months later, on 9 September 2005, in support of an application for pre-action interrogatories. At para 16 of that affidavit, she said:

When I was physically released, I went to the toilet. However, one of the unidentified men did not allow me to close the door of the cubicle. As I urinated, the seventh unidentified man stood outside the cubicle and watched me.

60 In their evidence before me, the family members stated that at the St Gerard's Tribune of the Church where the plaintiff fainted, Tan and Ong had suggested bringing the plaintiff to the Room to rest. The first time that Tan told them that she was possessed was when he emerged from the Room about five minutes after the family members had left the Room. However in the plaintiff's police report she appeared to state that the priests had said she was possessed while at the St Gerard's Tribune, before they brought her to the Room. Although the police report is vague about this point, her position was clearly set out in paras 9 and 10 of the pre-action affidavit, in which she stated the following:

9. As I arose after prayer, I experienced a bout of giddiness and faintness. At that point in time, I was approached by two men. One of them was [Tan], who warned my relatives that I was "possessed by evil spirits". The other man was an elderly Chinese man who appeared to work at the Church.

10. [Tan] and the said man took me by the arms and brought me away, purportedly "to deliver the spirits" from my body.

### ***Attempts to conceal evidence***

61 The plaintiff and her husband, Jeyabal, were involved in three attempts to hide evidence of her psychiatric history. The plaintiff had been under treatment at the National University Hospital ("NUH") from 1986 to 1989. At that time she was working in TAS and had been referred to NUH by the TAS medical officer. During this period she was warded four times, in 1986, 1987, 1988 and 1989 for what the doctors term "dissociative disorder/hysterical dissociative neurosis". In lay terms, she was suffering from trances. The entry of 21 January 1987 in the NUH medical notes states as follows:

First admission – presenting history was increasing frequency of trance for 2 months, 3 – 4 times a day, even at work and out of context of religious ceremonies. Interfered with work. Also started to have self-harming behaviour e.g. pouring kerosene over herself.

62 The NUH medical notes record instances during consultations in which she fell into trances, as well as hysterical behaviour in which she would struggle violently and inflict self injury:

22 December 1986: "Had two episodes of loud breathing and jerky movements. Banged her head against the wall at 1 am. Was stopped by staff ..."

26 December 1986: "Had two episodes of trance state. The latter state characterized by rapid loud breathing, glide from bed to floor, wriggle like a snake, ate ½ of the hard boiled egg which was given to her earlier by fellow patient. Got out of trance and vomited. Appeared dazed and confused. Asked for time, whether she had been given medication and dinner"

21 January 1987: "Trance lasting about 3 minutes with snake like movements. After examination, crawled on the floor like a snake, struggled when brought to bed."

23 January 1987: "Episodes of agitation in ward ... struggles with staff, tried to strangle staff nurse & doctor ... Gets hysterical – screams, says doctors make her angry ... cannot remember strangling nurses."

28 January 1987: "Had evening sessions of ventilating her feelings. Asked for blood and attempted to strangle the staff nurses ..."

22 November 1987: "Still agitated ... struggling with staff ... wants to murder everyone."

63 In October 1989 the plaintiff left TAS after she received a \$23,600 *ex gratia* payment under a self-resignation scheme. Thereafter the NUH medical notes record a recovery and she stopped treatment. Then in May 2000 she was admitted to the Institute for Mental Health ("IMH"). According to the IMH records, she had "complained of stress resulting from family issues and increased alcohol intake of late". She told the doctor that since 1990 she had coped with stress by drinking gin daily and on a typical day she starting drinking upon waking up and continued through the day until she finished the bottle. She was diagnosed to have alcohol dependence syndrome. She was recorded to have told the doctor that her husband "asked her to act like a mental patient to get compensation in 1989. Says he needed money to run family".

64 In October 2006 the plaintiff requested IMH for a medical report regarding her May 2000 admission. IMH provided a report dated 24 October 2006 which contained a mention of her NUH treatments in the following terms: "You informed us of your past history of bipolar disorder, treated at the National University Hospital from 1987 to 1989". There is a record in the IMH notes by one Dr Jimmy Lee that the plaintiff telephoned him on 26 October 2006 and said that she "never had treatment at NUH before" and that "she didn't suffer from bipolar". The plaintiff requested that he remove this remark from the report. Dr Jimmy Lee also recorded a subsequent telephone call from Jeyabal, in which the latter confirmed that the plaintiff was "never seen by NUH, no [past history] of mental illness". Dr Lee wrote a fresh report dated 30 October 2006 which removed the offending sentence. This was the first attempt by the plaintiff to conceal evidence of her psychiatric history.

65 From October 2000 to October 2005, the plaintiff had been a patient of the Flame Tree Medical Centre which was run by the husband and wife team of Dr Tay Ser Wee and Dr Kartika Hanafi ("Dr Kartika"). The plaintiff had consulted both of them during her various visits there and, as part of her treatment, had related her family and alcohol problems. Two days after the incident, on 12 August 2004, the plaintiff consulted Dr Karthika and she continued going to the clinic on various dates thereafter. On 21 October 2005 the plaintiff requested Dr Kartika for a medical report on her mental state prior to the incident on 10 August 2004. Dr Kartika recorded in her patient notes that the

plaintiff wanted no mention of her family problems, alcoholism and depression. Dr Kartika told her that this would not be legal or right because it would be a great omission of the truth. However the plaintiff insisted on such a medical report. In the event Dr Kartika did not issue a medical report. She testified that a report that did not mention her medical history and family problems would not be truthful. So when the plaintiff insisted on a report a week later, on 28 October 2006, Dr Kartika told her to get her lawyer to make an "official request". No such letter came and no report was issued. This was the second attempt by the plaintiff to hide her psychiatric history.

66 Even in answers to the interrogatories served on the plaintiff by the defendants, she had not been forthright. Question 2 asked if she had sought treatment or been hospitalised or treated for any ... psychiatric condition prior to the incident. In her answer filed on 10 November 2006, she mentioned her 2000 IMH admission but not the 1986-1989 NUH treatment. Counsel for the defendants pointed out that this answer was given within two weeks of the plaintiff's request to Dr Jimmy Lee to omit reference to NUH and therefore it could not be explained away as a lapse of memory. This was attempt number three.

### ***Strong corroborating evidence***

67 There is strong corroborating evidence of the truth of the defendants' testimonies. This pertains to the defendants' assertion that the plaintiff had manifested a snake spirit in her trances that night and had crawled like a snake on the ground. This was attested to, at the very latest, in the defence filed by Ong on 21 September 2006. In particular (d) of para 8, he pleaded that he saw the plaintiff "creeping on the floor strangely" when he first encountered her at the St Gregory's Tribune of the Church. He said at particular (i) that, when prayers were said and holy water sprinkled in the Room, the plaintiff screamed hysterically and was creeping on the floor strangely. At this time the defendants did not have any knowledge about the plaintiff's treatments in NUH in 1986 to 1989 and the medical notes which provide a remarkably similar description of the plaintiff going into snake-like trances. Further, a sister of the plaintiff, Santha d/o Krishnan ("Santha"), who offered herself as a witness only after the trial had commenced, testified that from a very young age the plaintiff had been going into snake-like trances in religious ceremonies. Her description of the manner in which the plaintiff moved was eerily similar to the descriptions of the defendants in their testimonies. It would be very difficult for the defendants to have come up with such a bizarre story about the plaintiff creeping on the ground like a snake so closely resembling the description of the NUH medical notes and Santha unless they had actually gone through the experience.

68 Another corroborating evidence favouring the defendants' version of events came from the plaintiff's own statements to Dr Kartika when she consulted her on 12 August 2004, two days after the incident. According to Dr Kartika's medical notes, the plaintiff related the following to her:

Woke up in a room. [Patient] disorientated. [Loss of consciousness] ?? minutes. [Patient] asked who they were. Someone said: "I am Jesus". [Patient] was angry - "Then I am Lucifer"

It must be recalled that not only did the plaintiff not mention this in her AEIC, the thrust of her evidence of the two hours or so in the Room was that the defendants had acted as if she was possessed when there was no cause for this and despite her repeated protestations to the contrary and her desperate pleas to be released. However this matches the evidence of the defendants that Lucifer made an appearance that night.

### **Findings of fact**

69 Accordingly I find the defendants' version of the events of that night (set out in [25] to [38])

above) to be true and any part of the plaintiff's version that contradicts it to be false.

### **The claims in false imprisonment and assault and battery**

70 On those findings of fact, the first claim of false imprisonment would be dismissed as the plaintiff had, at no point that night, been prevented from leaving the Room. The family members were not prevented from entering and leaving the Room at any time that night and indeed they did go in and out on various occasions. The plaintiff was not prevented from going to the toilet and she had been assisted there upon her making the request.

71 The second claim of assault and battery must also be dismissed. An assault is an act which causes another person to apprehend the infliction of immediate, unlawful, force on his person and a battery is the actual infliction of unlawful force on another person – see *Collins v Wilcock* [1984] 1 WLR 1172 at 1177. On the findings of fact I have made, there were no assaults on the plaintiff by any of the defendants, whether in the form of words or gestures. Throughout the entire event, with the exception of one instance, the defendants did not say or do anything that could be apprehended by the plaintiff as a threat to her person.

72 The exception pertains to Nasrom saying to the plaintiff "If I have the power of God I will knock your head" as she walked down the corridor after leaving the toilet hurling abuses at all and sundry. Nasrom said that he uttered those words as he was angered by her abuses after they had spent more than two hours in the Room trying to help her. The circumstances under which those words were said were described by Joanna, the ninth defendant, in para 20 of her AEIC:

As she was walking towards the corridor leading to the reception area, she was grumbling away about her bladder and us keeping her so late at night. We said nothing to her. There were some people along the corridor and the Indian lady's son who was along the corridor followed us. Then I heard a male voice behind me, he said, "if I had the power I will knock your head, stop grumbling". This was at the passageway before reaching the 2nd Room. She responded by using vulgarities. She used the "F" word. She continued to walk towards the exit and at the reception area I saw the 2nd and 3rd defendants, the brother and everyone else there.

Joanna's description, that Nasrom was behind her, puts him as not standing close to the plaintiff. This is supported by the evidence of the plaintiff's witnesses. Jairaj and Subashini said that Nasrom had said to the plaintiff: "You come here and I will break your head", indicating that there was some distance between them. Even the plaintiff herself, in her AEIC, did not state that she apprehended the infliction of immediate force on her upon hearing Nasrom's words. In my view the nature of the words uttered – "If I have the power of God I will knock your head" – and the circumstances in which they were uttered – Nasrom was not standing near the plaintiff, there could not have been an apprehension on the part of the plaintiff of immediate force to her person.

73 Insofar as the defendants had applied physical force on the plaintiff at various times that night, it was to restrain her from hurting herself. For this, the defendants had the implied consent of the plaintiff's son, Jairaj, and daughter, Subashini, when they told Tan and Ong that their mother was "possessed" and requested help from them. Resham convinced Tan and Ong that the plaintiff was possessed by claiming she was possessed by the spirit of a dead soldier and demonstrating that she responded to military commands. Resham had represented himself to Tan and Ong as the plaintiff's brother in the presence of Jairaj and Subashini. He had also requested Tan and Ong to help the plaintiff who he claimed was being possessed by spirits at the time.

74 Further, the defendants rely on the common law doctrine of necessity – see *R v Bournemouth*

*Community and Mental Health Services Trust Exp L* [1999] 1 AC 458 at 490. I do not need to go further into this because I do not think that any person in his right mind would say that the defendants were not justified in the circumstances to apply physical force on the plaintiff to prevent her from hurting herself when she flailed her arms and legs violently and appeared to strangle herself. The only condition is that such physical force must be reasonable and I find that it was.

### **The claim in negligence**

75 The third claim is in negligence, under which the plaintiff must show that the defendants owe her a duty of care and that in carrying out the acts against her, they had breached that duty. Further, unlike the torts of false imprisonment, assault and battery, to succeed in a claim in negligence, the plaintiff must also show that the negligent acts had caused her damage. The plaintiff's case is that she has suffered and still suffers from PTSD as a result of the acts inflicted upon her by the defendants that night.

### **Duty of care**

76 The Court of Appeal in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR 100 ("*Spandeck Engineering*") held that the test to determine the imposition of a duty of care was a two-staged one of (i) proximity and (ii) policy considerations. In relation to proximity, the court said that there must be sufficient legal proximity between the claimant and defendant for a duty of care to arise, and this depends on the closeness of the relationship between the parties. The court agreed with the following passage from the judgment of Deane J in *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 at [55]-[56], a decision of the High Court of Australia:

The requirement of proximity is directed to the relationship between the parties in so far as it is relevant to the allegedly negligent act or omission of the defendant and the loss or injury sustained by the plaintiff. It involves the notion of nearness or closeness and embraces physical proximity (in the sense of space and time) between the person or property of the plaintiff and the person or property of the defendant, circumstantial proximity such as an overriding relationship of employer and employee or of a professional man and his client and what may (perhaps loosely) be referred to as causal proximity in the sense of the closeness or directness of the causal connection or relationship between the particular act or course of conduct and the loss or injury sustained. It may reflect an assumption by one party of a responsibility to take care to avoid or prevent injury, loss or damage to the person or property of another or reliance by one party upon such care being taken by the other in circumstances where the other party knew or ought to have known of that reliance. Both the identity and the relative importance of the factors which are determinative of an issue of proximity are likely to vary in different categories of case. That does not mean that there is scope for decision by reference to idiosyncratic notions of justice or morality or that it is a proper approach to treat the requirement of proximity as a question of fact to be resolved merely by reference to the relationship between the plaintiff and the defendant in the particular circumstances. The requirement of a relationship of proximity serves as a touchstone and control of the categories of case in which the common law will adjudge that a duty of care is owed. Given the general circumstances of a case in a new or developing area of the law of negligence, the question what (if any) combination or combinations of factors will satisfy the requirement of proximity is a question of law to be resolved by the processes of legal reasoning, induction and deduction. On the other hand, the identification of the content of that requirement in such an area should not be either ostensibly or actually divorced from notions of what is "fair and reasonable" ... or from the considerations of public policy which underlie and enlighten the existence and content of the requirement.



77 On the facts of the present case, Jairaj and Subashini had requested Ong and then Tan, in their capacity as priests and on Church premises, to help their mother, the plaintiff, who they claimed was possessed. They told the priests that the plaintiff was a Catholic. Tan and Ong agreed to render assistance, and led the plaintiff into the Room to pray for her. In my view it is clear that the test of proximity is met under these circumstances and a *prima facie* duty of care arises.

78 In respect of the second stage test, the Court of Appeal in *Spandeck Engineering* held at [83] that policy considerations should then be applied to the factual matrix to determine whether or not to negate this duty. The court went on to elucidate the general propositions in respect of such policy considerations in [84] and [85]:

84 We also recognise that the obvious objection to utilising policy as the overarching determinant of liability is its potential to result in arbitrary decisions. Although it is generally recognised that public policy is an unruly horse (*per* Burrough J in *Richardson v Mellish* (1824) 2 Bing 229 at 252; 130 ER 294 at 303), it cannot be *completely* ignored. The danger is *not* with judges deciding cases based on policy considerations but rather with judges deciding cases based *solely* on them. We agree with Prof Tan ([29] *supra* at 228) that “[t]he truth lies somewhere in between pure principle-based decisions and policy-based decisions” and that “[i]t is obviously impossible to decide cases *in vacuo*, exclusive of the interests and the context of the community for which the decisions are made”. In our view, it is inescapable that some measure of public policy must be considered but it must not be the sole determinant.

85 We would also caution that when applying policy considerations to negate the imposition of a duty of care, the courts must be careful to differentiate such considerations from the requirement of proximity in the first stage of the test we have articulated. The courts must, as far as possible, avoid giving the impression that there remain “unexpressed motives” behind their finding for or against a duty. The courts must also not have litigants believe, as J A Smillie put it in “The Foundation of the Duty of Care in Negligence” (1989) 15 Monash U L Rev 302 at 302, that “none of [the tests articulated by the courts] is truly explanatory of judges’ reasoning or provides a helpful framework for analysis of the duty question”. If there is truly a *pertinent and relevant* policy consideration involving value judgments which reflect differential weighing and balancing of competing moral claims and broad social welfare goals, we feel that it would be better if the courts were to articulate these concerns under the requirement of policy considerations, rather than subsume these concerns within the proximity requirement, which may then lead to an overall distortion of the legal test to determine the existence of a duty of care. In this respect, we agree with Nicholas J Mullany when he notes in “Proximity, Policy and Procrastination” (1992) 9 Aust Bar Rev 80 at 83 that:

Judges should openly express the true premises of their decisions and, if recovery is considered to be undeserved, in the light of greater moral, social, economic, administrative or philosophical public perceptions, then these reasons and not others inherently uncertain in nature, should be expressed as the true foundation for denial of recovery.

79 The defendants contended that there exists policy reasons to negate such a duty of care and made the following submissions:

(a) The public policy argument in recognising that Singapore is a multi-racial country where racial and religious harmony is valued and protected.

(b) To impose a duty of care on priests, pastors, mediums, imams or any person of the faith not to cause psychiatric harm to people who request prayer will lead to a flood of claims and

complaints.

(c) If such a duty of care was imposed, then men of faith would be making excuses to avoid rendering spiritual assistance, which would not be in the public interest.

(d) One can also imagine that a number of claims may be opened up if such a duty of care is imposed by the court, and such claims may involve persons of different religious faiths.

(e) Ultimately, two things must be acknowledged:

- the family went to Church on their own accord and they sought the priests for help and prayer, and

- the priests whose entire vocation involves prayers did just that.

(f) Any imposition of a duty of care in such circumstances cannot be good for the public interest.

(g) However, this is not to say that if priests or defendants incarcerate persons for long periods in terms of days and months, the court should exclude these claims.

(h) But where the prayers were relatively ordinary as the defendants testified, any duty of care imposed would send a shiver down the places of worships where prayers are constantly offered to those in need of help.

80 In my view, the substantive policy arguments in that list fall under three general categories, *ie* the floodgate argument (point (b)), disincentive for religious organisations to render assistance (point (c) and (h)) and the potential for inter-religious conflict in our multi-religious society (points (a) and (d)). I can quickly dispose of the remaining three points: point (e) pertains to exactly the reasons why there must be a sufficient degree of proximity, point (f) is – with the greatest of respect to counsel – a bland statement, and point (g) in fact concedes that there is a basis for imposing the duty.

81 I do not see the floodgate argument as a valid policy reason for negating the duty of care in this case and in any event there is no evidence before me that this will lead to a flood of cases. In respect of the second category, I do not see how imposing a duty of care would cause religious organisations, whose objectives generally involve the salvation of souls or attainment of divinity, to hesitate in their pursuit of those objectives. The imposition of similar duties have not posed a problem in relation to medical or rescue personnel whose activities actually pose a higher risk of direct physical consequences. I see no reason why, in the area of the metaphysical, less restraint on spiritual leaders is justified. On the final point, I do not see this as a potential source of inter-religious conflict. In the first place, the plaintiff claimed to be of the same religion as the defendants. And if it were a situation where the plaintiff and defendants are of different religions, surely a regime that imposes a duty of care on a defendant would ensure that he acts with greater care and therefore reduces the risk of such conflict? Indeed, going along with the defendants' submission, it would mean that religious organisations have *carte blanche* to act against anyone in the name of religion without having to exercise due care in ensuring that such persons do not suffer injury or damage. With the greatest of respect to counsel for the defendants, this is a patently absurd suggestion.

82 I therefore find that the defendants owed the plaintiff a duty of care. The only issues are whether: (a) in the course of the events of that night, they had breached that duty; and (b) the plaintiff had suffered damage arising from such breach.

83 In respect of issue (a), the defendants were told by the plaintiff's son, daughter and a person who they were led to believe was her brother that she was possessed. They were asked to help her and pray over her. In the course of such prayer the plaintiff grew violent and the defendants perceived that she was in danger of hurting herself. They reacted by restraining her arms and legs, releasing her only when she calmed down. The defendants saw that she went in and out of what they perceived to be trances which led them to believe that she was possessed by three different spirits. For more than two hours on the night of 10 August and into the early morning of 11 August 2004, the defendants reacted to the events as they chillingly unfolded before them. They did what their religion taught them to do, *ie* pray over the plaintiff. All "engagements" with the "spirits" took place when the plaintiff manifested a change in voice which prompted Tan to respond by asking for the identity of the "spirit". The substance of the defendants' actions that night was the invocation of divine assistance by prayer. I find that the defendants had acted reasonably in the circumstances and did not breach their duty of care towards the plaintiff.

84 In respect of issue (b), I turn to analyse the evidence pertaining to the plaintiff's medical condition.

### ***Evidence of plaintiff's medical condition***

85 Two psychiatrists gave evidence on behalf of the plaintiff. They were Prof Ong Thiew Chai ("Prof Ong"), a senior consultant at Tan Tock Seng Hospital and Dr Angelina Chan ("Dr Chan"), a consultant at Changi General Hospital. Prof Ong treated the plaintiff from 3 September 2004, about three weeks after the incident, until 9 November 2006. In his medical report dated 16 September 2005, Prof Ong opined that the plaintiff suffered from severe depression, phobia and anxiety arising from the incident with poor prognosis. Prof Ong was of the view that she is severely impaired by the incident and that her treatment will be lifelong.

86 Prof Ong referred the plaintiff to Dr Chan in April 2005 for a second opinion and follow-up management and treatment. Dr Chan treated the plaintiff from that time right up to the trial. In her medical report dated 29 August 2005, Dr Chan diagnosed the plaintiff as suffering from chronic PTSD with depression and said her symptoms were persistent, severe and extremely disabling. She said that this had adversely affected the plaintiff's ability to cope with self-care, the demands of home and relationships with her family. Dr Chan opined that the plaintiff will require long term treatment and follow-up of her illness and that she is unlikely to fully recover from her symptoms. In a second medical report dated 17 November 2006, Dr Chan maintained her diagnosis and said that the plaintiff's condition had worsened with severe acute exacerbation of her PTSD symptoms as a result of media publicity and having to recount the details of her experience in preparation for the upcoming court hearing. Dr Chan said that when she saw the plaintiff on 11 November 2006, she was still experiencing persistent, severe and extremely disabling PTSD symptoms despite more than adequate treatment with medication and psychotherapy. She was tearful, relevant, forthcoming and preoccupied with flashbacks of the incident, as well as depressed with passive suicidal ideas, highly agitated and anxious.

87 In contrast to the rather dire picture of the plaintiff painted by Dr Chan, the defendants produced video evidence, taken by private investigators, of the plaintiff going about her domestic activities (she was seen cooking meals and hanging out clothes to dry from the kitchen window of her HDB flat), going out to the temple dressed in brightly coloured dresses and even working out on the treadmill and various other exercise machines in the gym. These activities took place between 29 December 2006 and 12 May 2007. Prof Ong and Dr Chan were shown the surveillance videos and defence counsel put to them that this was clear evidence that the plaintiff was leading a normal life during the period of surveillance with no symptoms of PTSD. Both Prof Ong and Dr Chan maintained

their diagnosis of PTSD. They explained that the scenes in the videos were not necessarily inconsistent with their own clinical observations of the plaintiff. This was because PTSD was a fluctuating condition and the symptoms were not evident all the time, but usually caused by a trigger event. Also part of the therapy was to get the plaintiff to live normally. They both said that the symptoms shown and described by the plaintiff were difficult to fake, especially over an extended period of time. In addition, the plaintiff was medicated over this period and had undergone several courses of ECT. In the light of their own clinical observations, the observations of the nursing and other medical staff during the various periods that the plaintiff was warded and the observations of the occupational therapists, Prof Ong and Dr Chan were of the view that it was not likely that the plaintiff was malingering and stood by their diagnosis of PTSD. However Dr Chan conceded that the plaintiff could have exaggerated her symptoms at times.

88 The defendants called two psychiatrists to give evidence on their behalf, Dr Lim Yun Chin ("Dr Lim"), a consultant psychiatrist at Raffles Hospital and Dr Ung Eng Khean ("Dr Ung"), a senior consultant, child, adolescent & adult psychiatrist and psychotherapist at Adam Road Hospital. Dr Lim and Dr Ung jointly conducted a mental state assessment of the plaintiff on 13 July 2007. They perused the medical notes prepared by Prof Ong and Dr Chan as well as the notes from NUH pertaining to the plaintiff's treatment there from 1986 to 1989, the IMH notes pertaining to her admission in 2000 and the clinical notes made by various general practitioners ("GPs") consulted by the plaintiff from 2003 to 2005, namely Flame Tree Medical Centre and Peace Family Clinic. They also viewed the surveillance video by the private investigators of the plaintiff from December 2006 to May 2007. Finally, they perused the AEICs of the witnesses on both sides.

89 Dr Lim produced a report dated 31 August 2007 in which he concluded that the plaintiff was suffering from depression. However he was of the view that this condition was already present even before the incident. Dr Lim noted that this was evident from the IMH medical notes as well as those from Flame Tree Medical Centre and Peace Family Clinic and concluded that the plaintiff had several depressive symptoms prior to August 2004. Dr Lim also noted that her NUH records showed that she had resorted to falling into trances to cope with the stresses in her life. Dr Lim opined that she could not be suffering from PTSD, a diagnosis that is heavily dependent on the subjective complaints of the patient, for the following reasons:

- (a) she had shown time again her capacity to overtly deceive in her disclosures;
- (b) her efforts at concealment;
- (c) her symptom exaggeration;
- (d) a personal agenda of financial gain to perpetuate her symptoms;
- (e) she had a capacity of speaking what was in her mind, fully aware that it did not need to be factual; and
- (f) her complaint after 10 August 2004 appeared to be a variation of symptoms she had when she was in NUH as well as when she was being followed up by her GPs after her discharge from NUH.

90 Dr Ung opined that the plaintiff exhibited many features of malingering or partial malingering with respect to PTSD. He pointed out that although the plaintiff had some new symptoms after the incident, many of her symptoms of PTSD predate the event and she had well-documented medical records of insomnia, depression, difficulties coping with work and family, emotional instability, dissociative trance states, substance misuse, suicidal thoughts, anxiety and stress. Dr Ung pointed

out that the plaintiff, who had expressed to Prof Ong and Dr Chan her fears of going out and her phobia of men, appeared to have no such problem when she was discreetly observed during the surveillance.

91 Dr Lim pointed out that there was no mention in the medical reports of Prof Ong and Dr Chan of the plaintiff's past psychiatric records, which are considerable. Both psychiatrists were also unaware of her alcohol and drug abuse during the periods they were treating her. Prof Ong and Dr Chan agreed that such information would be relevant to their diagnosis and, more importantly, treatment of the plaintiff and they were somewhat taken aback that the plaintiff and her family had withheld this information from them. Indeed, Dr Chan was surprised that the plaintiff's medical history with NUH and her 40 visits to Flame Tree Medical Centre and Peace Family Clinic were not mentioned to her. She said that knowledge of past medical history or psychiatric illness was critically important for the attending psychiatrist especially in PTSD cases. It was important to know that the plaintiff was formerly diagnosed with hysteria and dissociative trance disorder ("DTD") at NUH and that she was consuming drugs prescribed by other doctors. Dr Chan added that it was relevant for her to know that the plaintiff was diagnosed as suffering from alcohol dependency syndrome by IMH in 2000 and that the diagnosis of her psychiatric condition would not be complete or adequate without full appreciation of the patient's medical history. Dr Chan agreed that if the defendants' version of events were correct, and had she had such information and accurate details of the plaintiff's medical history from the plaintiff's family and from Resham, she would possibly not have come to her diagnosis of PTSD even if the plaintiff had been presented to her in the same manner. Prof Ong agreed that if the plaintiff had lied to him about the trauma she suffered at the Church that night, his diagnosis of PTSD would not relate to that event but to some other trauma.

92 Dr Ung pointed out that PTSD patients try their best to avoid talking about the traumatic incident causing the disorder as this would cause great pain to them. In the plaintiff's case, she was very anxious to talk about it, which did not indicate she was suffering from PTSD.

93 Although both Prof Ong and Dr Chan maintained their diagnosis even after they discovered the full extent of the plaintiff's medical history, in my view, they had been hampered in their ability to correctly diagnose the plaintiff due to the absence of a huge chunk of very relevant information about the plaintiff's psychiatric history. It is very likely that the plaintiff and her family had deliberately withheld this information from them as they had displayed a propensity to do so in relation to the IMH report, where the plaintiff and Jeyabal lied to Dr Lee about NUH – see [65] above. Dr Chan and Prof Ong had to labour under limited information and even misinformation by the plaintiff and her family. They told Dr Chan and Prof Ong that she had all along been in good health. During the periods that the plaintiff was warded at NUH, Prof Ong had given her various periods of home leave to be with her family in the evenings with her returning to the hospital to sleep. On a number of these occasions the plaintiff went surreptitiously to the Flame Tree Medical Centre and Peace Family Clinic to obtain more sleeping tablets and anti-depressants although Prof Ong had already prescribed for her what he felt was adequate for her condition.

94 Further, there is the issue of the plaintiff's state of mind that night. The evidence of Jairaj, Subashini and Resham, was that she had only fainted at the St Gregory's Tribune of the Church where she was revived before being brought into the Room. At no point in their evidence did they say that the plaintiff had become unconscious thereafter, although she was initially in a daze. Indeed the plaintiff herself, in her AEIC, said that she was conscious from the time she stepped into the Room. Having found the defendants' version of events to be the truth, it would follow that, based on her own assertion that she was conscious, the plaintiff was aware of the events in the Room that night. In this respect, Dr Kartika's medical notes provide a good insight into her state of consciousness. The plaintiff had consulted Dr Kartika two days after the incident, on 12 August 2004. The doctor had

noted that the plaintiff had said the following during that consultation:

Came with 'brother', Sham. On National Day, went to restaurant with children and brother because son going back to army. Had one glass of wine (red). Felt giddy, fainted in church. Carried to a room. Someone told the children that patient is possessed. Woke up in a room. Patient disorientated. Loss of consciousness ? minutes. Patient asked who they were. Someone said 'I am Jesus'. Patient was angry. 'Then I am Lucifer.' There were 4 men holding patient down and a lady reading Bible. Sprinkled Holy Water. Pastor asked patient to identify cross and eat holy wafer. Patient all along felt they were all 'silly' and enjoying the stupidity of the situation. Patient tried to challenge the men physically by pushing them off. 2 more people (men) came in. Patient was pinned – one man on thighs and abdomen. All of them were chanting. Someone tried to strangle patient. Patient relented and uttered 'Jesus' to get out of stranglehold because she wanted to go pass urine. All the men guarded toilet and told patient not to lock door. Patient accused people of sexual harassment. Man who sat on thigh voiced out 'Fuck you.' People still thought she was possessed. Then patient asked for IDs of 'attackers'. They told patient to leave because patient threatened to call police. Children and brother were repeatedly told by them to leave her alone because she is possessed.

95 In the circumstances, I accept the evidence of Dr Lim and Dr Ung that the plaintiff did not suffer from PTSD as a result of the events at the Church.

96 The question may well be asked: if the plaintiff is not suffering from PTSD, then what is she suffering from? Prof Ong and Dr Chan, who had treated her over long periods but at the time did not have a large chunk of information highly relevant to such a diagnosis, were convinced that she was suffering from PTSD. However they had approached the matter from the point of view of treating her illness and they conceded that it was possible that she was malingering. Dr Lim and Dr Ung, who only had a short session with her, but were armed with information of her extensive psychiatric background and who approached the matter as forensic psychiatrists, were equally convinced that she did not suffer from PTSD but from depression and DTD. All the doctors certainly agree that she is very ill. It may well be necessary for her current doctors to answer the question posed in order to determine the best treatment plan for her, but it is not a question for this court to answer. The question before me is whether, as the plaintiff had pleaded in her statement of claim, she has suffered from PTSD as a result of the events of 10 August 2004. Based on the evidence before me, and for the reasons set out above, I find that she has not.

### ***Finding on damages***

97 I therefore find that the actions of the defendants at the Church on the night of 10 August 2004 did not cause the plaintiff to suffer any damage.

### **Conclusion**

98 For the reasons given above, I find that the plaintiff has not proven her case against the defendants in respect of all three causes of action. Accordingly I dismiss her claim. I will hear counsel on the question of costs.