IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 16

Companies Winding Up No 233 of 2024

Between

(1) Sw Chan Kit

… *Claimant*

And

(1) Ntegrator Holdings Ltd

… *Defendant*

GROUNDS OF DECISION

[Companies — Winding up — Substantial and *bona fide* dispute]

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v
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Hri Kumar Nair J:

Introduction

1 HC/CWU 233/2024 ("CWU 233") and HC/CWU 238/2024 ("CWU 238") were respectively applications to wind-up Ntegrator Holdings Limited ("NHL") and its wholly-owned subsidiary, Ntegrator Private Limited ("NPL").

2 The applicant in CWU 233, Sw Chan Kit ("Sw"), was the former financial controller of NHL.[1] Sw was also an applicant in CWU 238 together with Han Siew Meng ("Han"), a former director of both NHL and NPL.[2]

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1 1st Affidavit of Sw Chan Kit filed in HC/CWU 233/2024 on 23 August 2024 ("AEIC SCK-1") at para 1.

2 1st Affidavit of Han Meng Siew filed in HC/CWU 238/2024 on 30 August 2024 ("AEIC HMS-1") at paras 1 and 3.

3 Sw issued statutory demands seeking payments of S$106,859.66 from NHL ("the CWU 233 Statutory Demand") and S$231,936.87 from NPL.[3] Subsequently, Han issued a statutory demand seeking payment of S$240,578.23 from NPL.[4] CWU 233 and CWU 238 were brought on the basis that NHL and NPL had failed to pay the sums demanded and were therefore deemed insolvent by operation of s 125(2)(a) of the Insolvency Dispute Resolution Act 2018 (2020 Rev Ed) ("IRDA").

4 NHL and NPL opposed the applications, disputing their indebtedness to the applicant(s). On 13 December 2024, they filed claims for damages against Sw, Han and one Chang Joo Whut in HC/OC 984/2024 ("OC 984").

5 When CWU 233 and CWU 238 came up for hearing on 24 January 2025, I was informed that NPL had filed an application under s 64(1) of the IRDA that same day and that an automatic moratorium with respect to proceedings against NPL, including CWU 238, was therefore in force.[5] I heard CWU 233 and ordered NHL to be wound up. I give my reasons below.

The Law

6 It is well established that a debtor-company need only raise triable issues in respect of the claim against it to obtain a stay or dismissal of a winding up application. To raise such triable issues, the company must show that there exists a substantial and *bona fide* dispute, whether in relation to a cross-claim or to the subject debt: see *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public*

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3 AEIC SCK-1 at para 14.

4 AEIC HMS-1 at para 14.

5 HC/OA 88/2025.

Joint Stock Co) [2020] 1 SLR 1158 at [25], citing *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 (*"Pacific Recreation"*) at [23] and [25]. The standard for showing a substantial and *bona fide* dispute is the same as that for resisting a summary judgment application: *Pacific Recreation* at [23].

7 Where the debtor-company has shown that a substantial and *bona fide* dispute exists, the court will typically dismiss or exceptionally stay the winding up application, because the claimant would have failed to establish either its standing as a creditor to bring the application or its grounds for obtaining the order it seeks: see *Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 at [28(a)].

No substantial and *bona fide* dispute

The debt relied on by Sw

8 I first set out the context of Sw's claim against NHL in CWU 233.

9 On 18 April 2023, Sw and NHL entered into a loan agreement ("the Loan Agreement") whereby Sw provided a temporary bridging loan to NHL in the sum of S$150,000.[6] The loan was for a period of four months with an interest rate of 20% per annum.[7] It was disbursed on 19 April 2023 and used by NHL for working capital purposes.[8]

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6 AEIC SCK-1 at paras 7–8.

7 AEIC SCK-1 at para 8.

8 AEIC SCK-1 at para 9.

10 From August 2023 to May 2024, NHL (through NPL) made various part payments of the loan principal and interest to Sw.[9] As of 7 July 2024, a sum of S$106,859.66 remained outstanding (the "Outstanding Debt"),[10] which formed the basis of the CWU 233 Statutory Demand.

11 The Outstanding Debt was admitted in writing by NHL. By an email dated 1 August 2024 sent in response to the CWU 233 Statutory Demand, NHL proposed a repayment plan of S$10,000 per month, with the first payment scheduled for 30 August 2024, until the full repayment of the Outstanding Debt ("the Admission").[11]

12 NHL's response essentially rested on two grounds: [12]

(a) the Outstanding Debt had been discharged; and

(b) alternatively, it had a genuine cross-claim against Sw.

13 NHL claimed that the Outstanding Debt was discharged when Sw, without authority, caused a sum of S$220,000 to be transferred from NPL to himself on 10 November 2023 (the "$220k Payment").[13] In this regard, NHL stated that NPL routinely made payments on behalf of NHL as NHL was a holding company and did not earn any revenue.[14] NHL argued (for the reasons

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9 AEIC SCK-1 at para 10.

10 AEIC SCK-1 at paras 12 and 14.

11 AEIC SCK-1 at para 16(e).

12 Defendant's Opening Statement filed on 16 January 2025 (Defendant's Opening Statement) at para 7.

13 Affidavit of Tam Ki Ying Kit filed in HC/CWU 233/2024 on 4 October 2024 ("AEIC TKY") at para 19.

14 AEIC TKY at para 10.

set out in paragraphs [17] and [18] below) that it was entitled to treat the $220k Payment as payment made to its credit. With respect to the Admission, NHL claimed that it was sent before it became aware of the $220k Payment.[15]

14 Sw admitted receiving the $220k Payment from NPL.[16] It was his case that the $220k Payment had nothing to do with NHL's liabilities under the Loan Agreement.

15 According to Sw, the circumstances surrounding the $220k Payment were as follows:

(a) In or around late October and early November 2023, NPL was short of funds and could not meet its liabilities, including its payroll.[17]

(b) To help tide NPL over its cashflow difficulties, Sw extended a temporary loan of S$220,000 to NPL.[18] In this regard, Sw transferred the sums of S$170,000 and S$50,000 to NPL's bank account on 2 October and 6 November 2023 respectively (the "Temporary Loan").[19] These payments were evidenced by NPL's bank statements (the "Bank Statements").

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15 AEIC TKY at para 23(d).

16 AEIC SCK-1 at para 16(c).

17 AEIC SCK-1 at para 16(b).

18 AEIC SCK-1 at para 16(b).

19 AEIC SCK-1 at [16(b)].

(c) The directors and management of NPL as well as the directors of NHL were aware of the Temporary Loan.[20] The Temporary Loan was in fact proposed by one Christian Heilisen ("Heilisen"), who was one of NHL's executive directors at the time.[21]

(d) When NPL came into funds, it repaid the Temporary Loan to Sw by way of the $220k Payment.[22]

16 NHL did not deny that NPL received the Temporary Loan and used the funds to meet its payroll and other liabilities.

17 Nonetheless, NHL submitted that:

(a) it "[did] not admit" the Temporary Loan.[23]

(b) Sw, a signatory to NPL's bank account, caused NPL to make the $220k Payment without the knowledge or authorisation of NHL's directors;[24]

(c) Sw owed fiduciary duties to NHL, and he ought to have applied the $220k Payment towards discharging NHL's liabilities under the Loan Agreement (which carried interest) instead of the Temporary Loan (which did not);[25] and

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20 2nd Affidavit of Sw Chan Kit filed in HC/CWU 233/2024 on 17 December 2024 ("AEIC SCK-2") at para 12.

21 AEIC SCK-2 at para 12.

22 AEIC SCK-1 at para 16(c).

23 Defendant's Opening Statement at para 10.

24 Defendant's Opening Statement at para 9.

25 Defendant's Opening Statement at para 12.

(d) by making the $220k Payment, Sw acted in breach of his fiduciary duties to NHL because he had engaged in self-dealing and appropriated the monies for himself in disregard of NHL's best interests.[26]

18 Further, NHL submitted that a creditor (in this case, Sw) "would be presumed to appropriate payments into the accounts made by its debtor in discharge of the earliest entries on the other side of the account" – the so-called "first in, first out" rule; as a consequence, it was open to NHL to treat the $220k Payment as discharging the (earlier) Outstanding Debt.[27]

19 For the reasons below, I found that NHL's arguments did not demonstrate a substantial and *bona fide* dispute in respect of the Outstanding Debt.

NHL's allegation that the Temporary Loan and $220k Payment were unauthorised

20 First, there was no requirement (or evidence of any requirement) for *NHL's* directors to be informed of or to authorise the relevant NPL transactions. Even though NHL was NPL's parent company, they were separate legal entities. It was therefore for *NPL* to claim that the Temporary Loan and the $220k Payment were unauthorised. Tellingly, no affidavit had been filed by NPL making any such allegation.

21 Second, it was significant that NHL's position was that it was *not admitting* the Temporary Loan. The burden was on NHL to prove that the

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[26] Defendant's Opening Statement at para 9.

[27] Defendant's Opening Statement at para 11.

Temporary Loan was unauthorised, and it had not adduced any evidence to meet that burden. This was especially curious given that NHL must have been in a position to make enquiries in respect of the same. On the other hand, the evidence strongly supported Sw's case:

(a) NHL had no operations of its own and relied on NPL to make payment of employees' salaries and CPF contributions as well as loan repayments.[28]

(b) NPL received the funds from the Temporary Loan from Sw and those funds were used to meets its liabilities, including payroll liabilities.[29] Indeed, the Bank Statements show that NPL would not have been able to meet its payment obligations if not for the Temporary Loan.[30]

(c) The Bank Statements evidencing the receipts of the Temporary Loan on 2 October 2023 and 6 November 2023 respectively contained the following notes: "Inward Paynow Temporary Loan … OTHER SW CHAN KIT SGD 170000" and "Inward Paynow Loan … OTHER SW CHAN KIT SGD 50000 ".[31] The fact that these transfers were loans from Sw was therefore evident from NPL's own documents and it was highly unlikely that NPL's management would not have known of the same.

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28 AEIC TKY at para 10.

29 AEIC SCK-2 at para 11.

30 AEIC SCK-2 at para 11.

31 AEIC SCK-2 at TAB 1.

22 Third, while Sw was a signatory to NPL's bank account, it was unlikely that he could have arranged for the $220k Payment on his own. Neither party stated what the authorisation instructions to the bank were at the time the $220k Payment was made. They both gave different versions of those instructions – but in both cases, Sw could not have authorised the $220k Payment on his own.[32] Neither party gave evidence of who the other signatory or signatories were who had instructed the payment. NHL's counsel disclosed that NHL had made inquiries with its bankers but had not received a response. This was surprising given that on its own case, NHL had discovered the $220k Payment several months ago in early August 2024.[33] Nonetheless, the burden was on NHL to prove that that the $220k Payment was not authorised. Further, given the amount involved, and the fact that NHL and NPL were in a difficult financial position, it was highly doubtful that the management of NHL and NPL at that time were unaware of the $220k Payment.

23 Fourth, and significantly, *NPL* did not make any claim against Sw in respect of these alleged unauthorised transactions in either CWU 238 or OC 984 although, according to NHL, Sw had by the $220k Payment misappropriated funds from NPL.

24 In response, NHL's counsel argued that NHL's directors, in particular, the deponent of its affidavit, Tam Ki Ying ("Tam") was only appointed in February 2024 and did not have personal knowledge of the facts. This did not assist NHL's case, and in fact, only undermined it:

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32 AEIC TKY at para 15; AEIC SCK-2 at para 38.

33 AEIC TKY at paras 19–20.

(a) It was not stated in Tam's affidavit that the other directors of NHL did not have knowledge of the relevant transactions, or that NHL did not have access to persons who may have had such knowledge. Indeed, NHL continued to have directors on its board who were appointed in 2021.[34]

(b) It was not NHL's evidence that everyone involved in, or would have knowledge of, the relevant transactions had left NHL or NPL or was not available. Nor was there any evidence of what steps NHL had taken to learn the facts in relation to the transactions or secure that evidence. Indeed, NHL had engaged a law firm to conduct an "investigation" into the $220k Payment, but those investigations were utterly inadequate – the firm simply accepted NHL's instructions that the $220k Payment was unauthorised and only interviewed Tam, who had no personal knowledge of the matter.[35]

(c) Importantly, NHL's admission that Tam did not have personal knowledge suggested that NHL's allegations against Sw in relation to the Temporary Loan and the $220k payment were contrived to stave off this application.

25 In any event, even if the Temporary Loan or the $220k Payment was unauthorised, it did not assist NHL:

(a) the consequence of the Temporary Loan being unauthorised would be that the sum would be repayable by NPL to Sw; and

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34 AEIC TKY-1 at pp 20–21.

35 AEIC TKY-1 at pp 80–88.

(b) if the $220k Payment was unauthorised, it would mean that Sw would be liable to repay the same to NPL, and not NHL.

26 In either case, and subject to the arguments below, NHL's liability to pay the Outstanding Debt was unaffected.

NHL's allegations that Sw breached his fiduciary duties

27 I agreed with NHL that Sw was arguably a fiduciary of NHL by virtue of his role as its Financial Controller, which placed him in a position of trust and confidence. However, I rejected the argument that Sw had acted in breach of his fiduciary duties to NHL by effecting the $220k Repayment. As explained above (at [21] and [22]):

(a) there was no evidence to rebut Sw's case that he had made the Temporary Loan to NPL and was entitled to be repaid by NPL; and

(b) there was also no evidence that the $220k Payment to Sw was unauthorised or made wrongfully.

28 In the circumstances, NHL's case that Sw, in the discharge of his fiduciary duties, ought to have caused NPL to discharge NHL's liabilities under the Loan Agreement first was misplaced.

29 It was also unclear how NHL's interests were affected by the $220k Payment or how that related to its obligation to pay the Outstanding Debt. In this regard, NHL submitted that the $220k Payment deprived it of an

opportunity to appropriate the monies.[36] But this would only be the case if there were insufficient funds available in NPL's bank account after the $220k Payment to meet the Outstanding Debt. Neither NHL nor NPL made any such claim. Further, NHL could have directed NPL to pay off the Outstanding Debt (which was already due) but did not explain why it failed to do so.

NHL's reliance on the "first in, first out" rule

30 For completeness, I briefly address NHL's reliance on the "first in, first out" rule, more commonly known as the rule in *Clayton's Case*. Essentially, the rule states that "when sums are mixed in a bank account as a result of a series of deposits, withdrawals are treated as withdrawing the money in the same order as the money was deposited": *Barlow Clowes International Ltd (in liq) and others v Vaughan and others* [1992] 4 All ER 22 at 35.

31 The rule has been described as no more than an evidentiary rule: see *Q & M Enterprises Sdn Bhd v Poh Kiat* [2005] 4 SLR(R) 494 ("*Q & M Enterprises*") at [56]. In *Q & M Enterprises*, Andrew Phang JC (as he then was) observed that the rule was applied almost invariably in the context of running accounts. It is also questionable whether the rule had any application outside a banker-customer relationship: see *Pars Ram Brothers (Pte) Ltd (in creditors' voluntary liquidation) v Australian & New Zealand Banking Groups Ltd and other* [2018] 4 SLR 1404 at [10].

32 I found the rule inapplicable here. There was no banker-customer relationship or running account. In any event, to suggest that one can treat

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[36] Defendant's Opening Statement at para 12.

payments out of NPL's bank account as first discharging a debt owed to *NHL* would have been to stretch the rule well beyond its limits. Further, the application of the rule was dependent on Sw being in breach of his fiduciary duties, in respect of which I had found that NHL had failed to raise a *bona fide* claim.

NHL's cross-claims against Sw

Clawback of salaries

33 NHL submitted that it had a genuine cross-claim against Sw because it was entitled to claw back salaries from him. According to NHL, Sw was absent from work without authorisation for 353 days (as evidenced by the absence of his entry records in NHL's entry pass attendance system) and failed to carry out work (as evidenced by the absence of email records) for 22 days.[37] It therefore claimed to be entitled to S$363,779 for Sw's absence from work and S$22,672 for his failure to work.[38]

34 I found that NHL had failed to demonstrate that it had a *bona fide* counterclaim.

35 Sw's duties to NHL were set out in a service agreement between himself and NHL dated 9 September 2005 ("Service Agreement").[39] NHL relied on Clause 6.3 of the Service Agreement, which stated that "[Sw] shall not be entitled to be paid in respect of any period during which he has been absent

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37 AEIC TKY at para 26.

38 Defendant's Opening Statement at para 20.

39 AEIC TKY at pp 30–38.

without leave".[40] However, the Service Agreement did not require Sw to be physically present in the office to discharge his duties. Nor had NHL produced any document to evidence a policy or directive that an employee's attendance was to be based on the pass attendance system's records or that employees were required to "clock-in" or "clock-out" via the said system.

36 Indeed, as Sw pointed out, NHL's evidence of his absence was misplaced because NHL did not use a system where employees were required to "punch in" and "punch out" for the purpose of attendance records and time-keeping.[41] Instead, NHL operated a simple entry pass system where employees were given an access card to enable them gain entry to the office.[42] Because employees often opened the front door for others, individual access records were inconsistent and unreliable as evidence of attendance.[43] NHL did not respond to this evidence. In fact, the records also showed that various directors, including Tam and Heilisen, did not enter the office at all from mid-2023 to mid-2024.[44] NHL argued that any failure on the part of other employees or directors to attend the office did not excuse Sw's failure to do so. But this misunderstood the point – the records suggested that they could not be used as evidence to prove that an employee had not been to the office, and more importantly, whether they had performed their duties.

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40 Minute Sheet at p 3.

41 AEIC SCK-2 at para 17.

42 AEIC SCK-2 at para 18.

43 AEIC SCK-2 at para 18.

44 SCK-2 at TAB 4 and TAB 5.

37 I also noted that the relevant period included the time when the COVID-19 lockdown measures were in place.[45] It was only from 19 August 2021 that employees returned to offices.[46] Even then, only half of employees could return and only if the companies so directed.[47] Yet, NHL's evidence of Sw's alleged absences did not take these into account.[48] Further, there was no evidence that Sw had caused NHL any loss on account of his alleged "absence".

38 At the hearing, NHL's counsel properly conceded that Sw's physical absence from NHL's offices was a "red-herring" given that a person of his position would not be expected to "clock-in" and "clock-out". Instead, he argued that Sw's non-performance was evidenced by the lack of any "work product" from him. But NHL's affidavit made no such allegation, only that Sw's e-mail records showed that he did not send any e-mails on 22 days. It was unclear how the absence of any email from Sw for 22 days over a period of employment of about 41 months was evidence of his not performing his duties. More relevantly, NHL did not adduce any evidence of SW's absence from the office when he was required to be there, his failure to attend to his duties or what "work product" he had failed to produce. Further, given that NHL was a listed company,[49] there would have been some evidence that its financial controller was not performing his duties if the allegation was credible.

39 On the contrary, as Sw's counsel pointed out, NHL's Nominating Committee and Remuneration Committee had deemed it fit to continue with

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45 AEIC SCK-2 at para 21.

46 AEIC SCK-2 at para 21.

47 AEIC SCK-2 at para 21.

48 AEIC TKY at pp 99–111.

49 AEIC TKY at para 7.

Sw's appointment over the years.[50] In 2023, the Remuneration Committee even approved a special bonus for him.[51] This appeared to contradict the allegation that Sw had done no work. Indeed, NHL's complaints only surfaced *after* Sw had resigned and issued the CWU 233 Statutory Demand in July 2024. It was also telling that in OC 984/2024, NHL had claimed that Sw had failed to "devote his time, attention and abilities to [its] affairs"[52] and not that he had failed to produce any "work product".

Damages for failure to report Han's alleged unauthorised absence and failure to work

40 NHL also claimed damages from Sw because he failed to report Han's (alleged) unauthorised absence and failure to work. In this regard, NHL relied on the same evidence as against Han as it did Sw. According to NHL, the records in its entry pass attendance system as well as Han's email records revealed that he was absent for 796 days without authorisation and failed to work for 672 days.[53] It therefore claimed from Sw the sums of S$1,132,032 (for failing to report Han's absence) and S$1,343,478 (for failing to report Han's failure to work).[54]

41 For the same reasons set out above (at [35]–[39]), NHL had failed to adduce sufficient evidence that Han was absent from or failed to work such as

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50 AEIC SCK-2 at para 22.

51 AEIC SCK-2 at para 22.

52 OC 984 SOC at para 23.

53 Defendant's Opening Statement at para 23.

54 Defendant's Opening Statement at para 24.

to raise a *bona fide* claim against Sw. It had also failed to adduce evidence that it had suffered any loss on account of Han's alleged absences or failure to work.

42 Further, the claim against Sw was premised on him being aware of ***and*** accountable for Han's (alleged) absences and failure to do his work. With respect to the former, NHL simply asserted that Sw and Han were "closely associated and aligned" and that it was "a distinct probability" that Sw was aware.[55] Such a bald allegation was plainly insufficient to raise a *bona fide* claim. With respect to the latter, NHL did not identify any obligation on Sw, other than to make the bare allegation that Sw was under "a duty of care" to stop Han from being paid "without doing substantive work".[56] But Sw was not Han's superior – as stated above (at [2]), Sw was NHL's financial controller while Han was NHL's director – and Sw's obligations did not extend to overseeing Han's work such that such a duty of care could be said to have arisen.

Conclusion

43 Having failed to respond to the CWU 233 Statutory Demand, NHL was presumed to be insolvent by operation of s 125(2)(a) of the IRDA. There was no attempt by NHL to demonstrate otherwise. On the contrary, the evidence was that:

(a) In HC/OA 1310/2024 where NHL made an application under s 64 of the IRDA, it admitted that in the event that the application

55 AEIC TKY-1 at para 28.

56 AEIC TKY-1 at para 28.

was not granted, the likely alternative would be placing it in liquidation.[57]

(b) Subsequently, that application was rejected on the basis that there was no reasonable prospect of the proposed scheme of arrangement working and being acceptable to the general run of creditors.[58]

(c) Sw's application was supported by United Overseas Bank ("UOB"), which was owed more than S$1.5m by NHL under a corporate guarantee. UOB disclosed at the hearing that it had made demand on NHL's guarantee the week before the CWU 233 was heard, and this demand remained unsatisfied.

(d) NHL had not filed any audited accounts since 2022 and had failed to call for an AGM by end-October 2024 as it was required to do.[59]

44 For the above reasons, I ordered NHL to be wound up.

Hri Kumar Nair
Judge of the High Court

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57 Applicant's Joint Skeletal Submissions filed in HC/OA 1310/2024 on 6 January 2025 at para 63.

58 HC/OA 1310/2024 Grounds of Decision issued on 9 January 2025 at para 33.

59 AEIC SCK-2 at paras 32–33.

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Probin Stephan Dass and Hillary Cheah Si-min (DennisMathiew) for the non-party (Chang Joo Whut).
