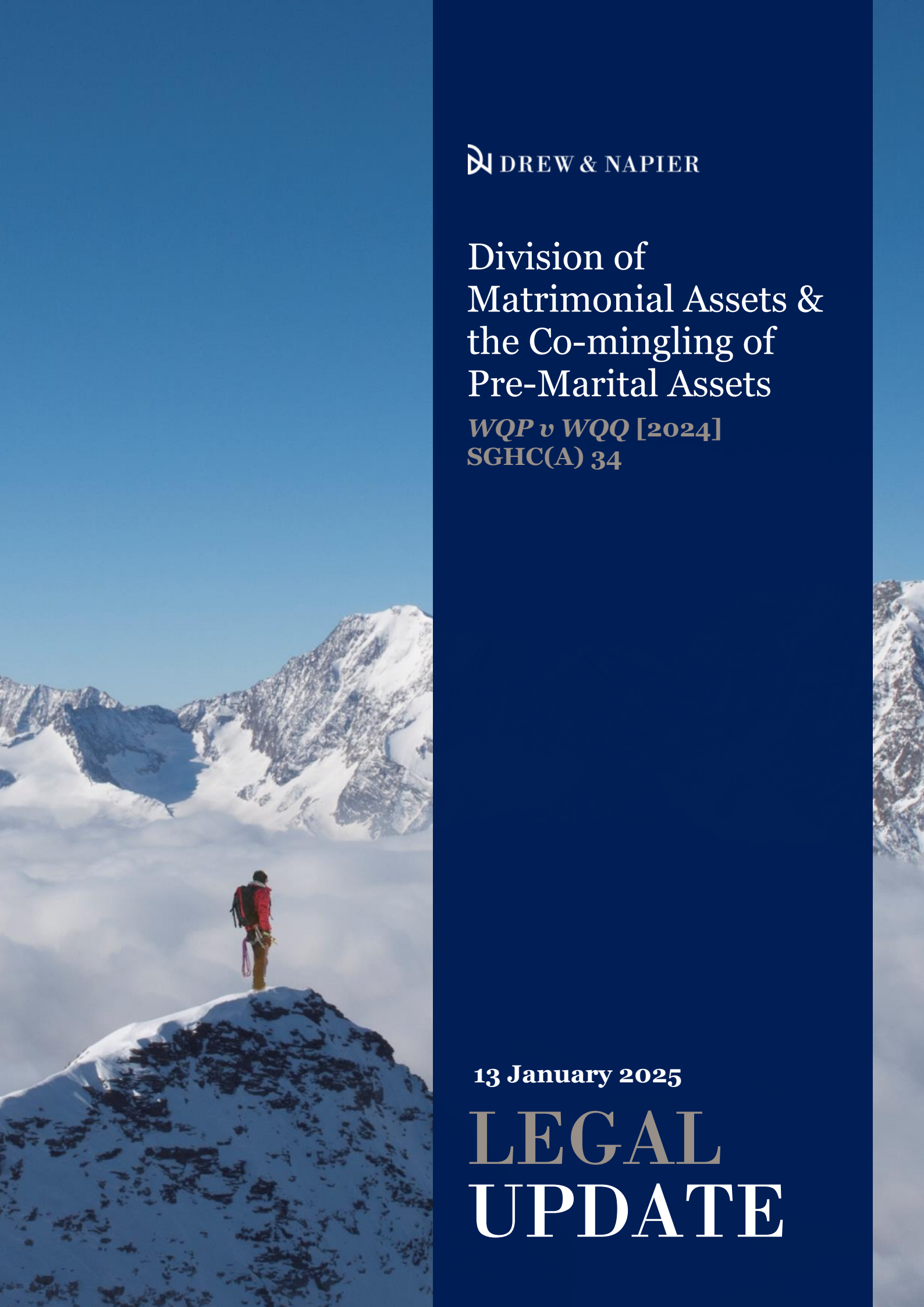




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Division of Matrimonial Assets & the Co-mingling of Pre-Marital Assets

WQP v WQQ [2024]
SGHC(A) 34

13 January 2025

LEGAL UPDATE

In this Update

In *WQP v WQQ* [2024] SGHC(A) 34, the Appellate Division of the High Court held that the fact that the pool of matrimonial assets comprises substantial pre-marriage assets commingled with post-marriage assets is relevant to the division of matrimonial assets pursuant to s 112 of the Women's Charter.

Our update discusses this decision.

03 INTRODUCTION

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INTRODUCTION

In *WQP v WQQ* [2024] SGHC(A) 34, the Appellate Division of the High Court (“**Appellate Division**”) held that the fact that the pool of matrimonial assets comprises substantial pre-marriage assets commingled with post-marriage assets is relevant to the division of matrimonial assets pursuant to s 112 of the Women’s Charter.

Our update discusses this decision.

BACKGROUND

The Husband and the Wife were married for approximately 10 years and have two children. The Husband semi-retired three years into the marriage while the Wife continued with her career.

The Husband had brought considerable wealth into the marriage consisting of at least \$5.4m in cash savings (“**Gifted Monies**”), which subsequently became commingled with monies earned during the marriage.

An interim judgment of divorce was granted on 29 September 2020. The Family Division of the High Court (“**Judge**”) valued the matrimonial assets at \$13,239,640.90. The Judge also assessed the parties’ direct contributions ratio to be approximately 70:30 in favour of the Husband and the indirect contributions ratio to be 40:60 in favour of the Wife, with a resulting average ratio for division of approximately 55:45 in favour of the Husband.

The Husband appealed against the Judge’s decision in relation to the division of matrimonial assets.

In the appeal, the Wife emphasised that even if the disputed assets were traceable to the Gifted Monies, the Husband had evinced a real and unambiguous intention to treat the Gifted Monies as family wealth. Consequently, the Gifted Monies would form part of the matrimonial assets.

DECISION OF THE APPELLATE DIVISION OF THE HIGH COURT

Although the Husband was unable to trace the specific assets in the matrimonial pool to his pre-marriage assets, there was evidence that at least a substantial portion of the matrimonial pool could be attributed to his pre-marriage assets. On the available evidence on the parties’ incomes and assets, it is improbable that the pool of matrimonial assets, valued at S\$13,239,640.90, can be attributed solely to income earned or investment yields made by the parties during their relatively short 10-year marriage. This is especially so after accounting for the Husband’s semi-retirement three years into the marriage and substantial provision for the family’s

expenses. A substantial portion of the pool of matrimonial assets could therefore be regarded as non-quintessential in character.

KEYPOINT

In determining the proportions of division, the court should have regard to the circumstances of the Husband commingling his substantial pre-marriage assets with the marital assets

The Appellate Division shifted the average ratio in the present case from 60:40 in favour of the Husband to 65: 35 in favour of the husband. The Husband's failure to retain the relevant documents was consistent with how spouses who are committed to the marital partnership would organise their affairs.

The Appellate Division held that this approach better reflects the underlying purpose of s 112 of the Women's Charter to divide the material gains of the marriage partnership and supports marriage partners in discharging their responsibilities as required by s 46 of the Women's Charter. It also minimises the incentive for parties in similar situations to submit inordinate amounts of documents and engage in the exercise of tracing multiple movements of dollars and cents over many years of marriage, in the hope of proving that certain assets are derived from pre-marriage assets which retain their character as non-matrimonial assets. Such an exercise would involve substantial resources from the parties and the courts and would also protract proceedings and further aggravate the parties' relationship. It would grate against the aspirations of a therapeutic justice system that endeavours to support parties in reaching a harmonious resolution of disputes and in moving forward in their lives.

COMMENTARY

The approach by the Appellate Division shows that courts do not want spouses to have a defensive mindset and guard their assets. Otherwise, this would defeat the purpose of the institution of marriage being one of trust and mutual cooperation from both sides.

Nevertheless, it remains vital for spouses who do come into a marriage with considerable pre-marital wealth, family gifts and/or inheritance monies to obtain legal advice as to agreements and practical arrangements which can aid and avoid or reduce the need for protracted litigation.

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