Applications to the conciliation authority – a quick way to secure a Swiss forum

1) Introduction

The Swiss Federal Supreme Court clarified the doctrine of *lis pendens* in international litigation. The court ruled that lodging a voluntary conciliation request is sufficient to establish jurisdiction in Switzerland, regardless of whether the claim was mandatory or optional.

Forum running is a hotly debated issue when parties are faced with the prospect of international litigation. Being able to secure jurisdiction in a forum that one is familiar with, poses no practical hurdles (languages, availability of counsel) and enjoys a solid reputation, with ensuing enforcement benefits, may be key in the run-up to actual proceedings.

Determinant in such considerations is frequently, how quickly a forum can be seized and which amount of effort (and money) is necessary to do so. Various countries handle this issue of *lis pendens* differently. The question what a party needs to observe before its claim may be considered pending before court (pre-trial stages, conciliation requirements etc.) may be the determining factor in how easily and swiftly a court may be seized with a matter.

The following summary gives an overview of the situation in Switzerland based on a recent Swiss Federal Supreme Court (5A_114/2025, January 13, 2026) which demonstrates that the quick actor may enjoy advantages in Switzerland.

2) Legal background

The issue of *lis pendens* in international litigation contexts is governed by the Swiss Federal Act on Private International Law (PILA). Art. 9 para. 1 PILA provides that if an action having the same subject matter is already pending between the same parties abroad, the Swiss court shall stay the case if it is to be expected that the foreign court will, within a reasonable time, render a decision capable of being recognised in Switzerland.

In order to determine when an action has been initiated in Switzerland, the conclusive date is that of the first act necessary to initiate the proceedings (art. 9 para. 2 PILA). The provision explicitly states that a notice to appear for conciliation is sufficient.

The conciliation proceedings referred in the PILA are pre-trial proceedings which are sometimes necessary, sometimes voluntary before ordinary Swiss civil litigation may be commenced. Its understanding and intelligent use can be decisive for the outcome of the forum question.

Pursuant to art. 62 para. 1 of the Swiss Federal Code of Civil Procedure (CPC), a case becomes pending inter alia, when an application for conciliation is filed. The applicant can submit its application orally for the record before the conciliation authority or hand in a

written claim (art. 202 para. 1 CPC). In both instances, the applying party must at least identify the opposing party and include the prayers for relief and a description of the matter in dispute (art. 202 para. 2 CPC). Any further level of detail is left to the claimant but not required. In other words, even a very abridged summary of the matters of fact and legal justification may suffice for the purposes of the application.

The idea behind these proceedings is to bring litigious parties together at a neutral venue with an objective third party in an attempt to reconcile disputes in an informal manner. In doing so, in many instances peace can be restored quickly and cost-efficiently thus sieving out unnecessary disputes (because of their obvious lack in substance or very strong likelihood of success) which should not go to court.

Once a request for conciliation has been filed, the matter is considered pending under Swiss law, even if no fully fledged claim has been submitted to a court.

Historically, there has existed uncertainty as to whether *lis pendens* could be created in the instances, were the CPC provides that the party intent on suing does not need to go through the conciliation phase, but does so nevertheless. A plaintiff may forego the conciliation proceedings where either the defendant's registered office or domicile is abroad or when the defendant's residence is unknown. In disputes where the CPC provides for the jurisdiction of a single cantonal instance (articles 5, 6 and 8 CPC), notably in commercial issues with a dispute value of more than CHF 30,000, the plaintiff may bring the action directly before the court.

It is accepted that a plaintiff may, despite being entitled to go directly to court, which requires a fully finalized statement of claim and accompanying evidence, also opt to request conciliation. Doing so has the consequence that the statute of limitation is interrupted. Until recently, it was however uncertain whether in such instances, doing so would also have the effect of *lis pendens*. In other words, could a plaintiff, who ordinarily would need to submit his claim with the commercial court, which frequently is the case in large commercial disputes, secure a Swiss forum by going the route of the voluntary, informal conciliation route.

The recent Swiss Supreme Court decision of January 13, 2026 has now clarified this issue: Lodging a conciliation request quickly will secure the Swiss forum.

3) Summary of the case

The case 5A_114/2025 was an international inheritance case. The central issue pertained to determining which court was first seized, that of Switzerland or that of France, in order to establish whether the Swiss proceedings had to be stayed in favour of the French courts. The pertinent facts were the following: F.A., a French national, passed away in the Swiss Canton of Valais in Switzerland in 2019. His widow (A.A., the appellant) and his four children (who all resided abroad) were in dispute over the division of the estate.

On June 3, 2020, the widow filed a petition for voluntary conciliation in Switzerland at the conciliation authority at her late husband's last residence in the Valais. A hearing took place on September 21, 2020, which was only attended by the widow. None of the other heirs (children) took part in the conciliation, even though the conciliation authority had served the summons on all involved parties.

Consequently, the conciliation authority issued an authorisation to the widow to bring the claim to court (three-month validity). The widow filed her claim before the Swiss first instance court (at her late husband's place of residence) on October 22, 2020.

On September 30, 2020, after the conciliation hearing (of September 21, 2020) but before the lodging of the claim by the widow (October 22, 2020), one of the sons (C.A.) filed a partition action with the Paris Judicial Court. In the Swiss first instance proceedings C.A. claimed that the earlier pendency of the proceedings in France barred the adjudication of the matter by the Swiss court. The Valais judges concurred and ruled that Swiss *lis pendens* had not been established until October 22, 2020, the date the claim on the merits was filed before the court, because it considered the September 2020 authorisation to be defective since the notice to attend the conciliation hearing had not been properly served on D.A. abroad.

As the French court action had been filed earlier (September 30, 2020), the Valais court stayed the Swiss proceedings (art. 9 para. 1 PILA). The widow took the matter on appeal in Switzerland, first to the Cantonal High Court in Valais, which dismissed her request. The widow then brought this decision before the Swiss Federal Supreme Court requesting its dismissal and finding that her inheritance claim was pending before the first instance court in Valais.

The Federal Supreme Court accepted her appeal and rejected the reasoning of the cantonal judges on two fundamental points of law:

Firstly, the Supreme Court confirmed that the filing of a conciliation request, even when it was optional (art. 199 para. 2 CPC, defendants abroad), is sufficient to create *lis pendens* within the meaning of art. 9 para. 2 PILA. The interpretation of the provision had to be flexible to encourage early referral to Swiss courts. Thus, Swiss *lis pendens* dated back to June 3, 2020, the date the widow filed the conciliation request.

Secondly, the Supreme Court considered the alleged invalidity of authorisation to be irrelevant. In the case of optional conciliation, the authorization to proceed to court is not a condition for the admissibility of the claim on the merits (unlike the situation in mandatory conciliation). Consequently, a defect affecting this authorization (here, improper service on a defendant) does not result in the retroactive falling away of the *lis pendens* created by the initial filing of the petition. Only an obvious defect in the voluntary conciliation filing (e.g., obvious lack of jurisdiction on the part of the conciliation authority to which the request was submitted) or a lapsing of the three-month validity of the authorisation for filing the action on the merits matter, would lead to such a material defect.

The Supreme Court thus found that the Swiss proceedings were validly initiated on June 3, 2020, i.e., prior to the French court action of September 30, 2020. The principle *of prior tempore, potior jure* applied in favor of Switzerland. The conditions for suspending the Swiss proceedings (art. 9 para. 1 PILA) were not met. The appeal by the widow was granted. The judgment of the Cantonal Court of Valais was set aside and reversed and the plea of *lis pendens* raised by the defendants was dismissed. The case is remanded to the Swiss court of first instance in the Valais for the proceedings on the merits to continue.

4) Conclusion and practical relevance

Under this jurisprudence by the Swiss Supreme Court, it is important to be aware that Swiss civil proceedings combined with pre-trial voluntary conciliation hearings may offer plaintiffs swift access to a Swiss forum.

The clarified stance of the highest Swiss judicial instance, underscoring the jurisdiction of Swiss courts, may be appealing to domestic or foreign plaintiffs seeking the security and predictability of Swiss court proceedings in fora they trust. At the same time, defending parties must take note that this clarification could leave them locked into Swiss jurisdiction where they fail to preempt such proceedings.