

The Law Debenture Trust Corporation plc (Appellant) v Ukraine (Represented by the Minister of Finance of Ukraine acting upon the instructions of the Cabinet of Ministers of Ukraine) (Respondent)

Case ID: 2018/0192

Case summary

Issues

The Law Debenture Trust Corporation plc (the "Trustee") is trustee of notes with a nominal value of USD 3bn carrying interest of 5 per cent per annum (the "Notes"). The Trustee has applied for summary judgment of its claim against Ukraine for non-payment of the sums due under the Notes. The Supreme Court is asked to decide whether Ukraine should be permitted to defend the claim at trial. The appeals raise the following issues:

- (i) Did Ukraine have the capacity to issue the Notes or to ensure into the ancillary contracts?
- (ii) Were the Notes issued or the ancillary contracts entered into without authority?
- (iii) Can Ukraine maintain that it was entitled to avoid the Notes for duress exerted by the Russian Federation?
- (iv) Can Ukraine maintain that non-payment of the sums due under the Notes is a lawful countermeasure?

Facts

The Notes were issued by Ukraine in 2013. They were constituted by a trust deed to which the Trustee and Ukraine were named parties. The sole subscriber of the Notes was the Russian Federation.

The principal amount of the Notes fell due for payment, together with the last instalment of interest, on 21 December 2015. However, payment was not made, and Ukraine has refused to make payment. The Trustee commenced proceedings for payment. Ukraine filed a Defence that resisted payment on the grounds that: (i) Ukraine lacked capacity to enter into the transaction as a matter of Ukrainian law; (ii) Ukraine's signatory (its Minister of Finance) lacked the authority to enter into the transaction by which the Notes were issued; (iii) Ukraine was entitled to avoid the Notes for duress arising from allegedly unlawful threats made by the Russian Federation against Ukraine (including alleged threats to its territorial integrity and alleged threats of the use of unlawful force) and the application of allegedly unlawful trade measures and economic pressure by the Russian Federation before the transaction was entered into; (iv) the terms on which the Notes were issued included implied terms that (inter alia) they would not be enforceable in circumstances where the Russian Federation itself was allegedly preventing or hindering their performance; and (v) in light of the Russian Federation's alleged breach of its obligations towards Ukraine not to use force against Ukraine and/or not to intervene internally in the affairs of Ukraine, Ukraine was entitled to rely on the public international law doctrine of countermeasures to decline to make payment.

The Trustee does not accept Ukraine's Defence. The Trustee's position is that even if Ukraine's account of what occurred were accurate, it would be irrelevant to the Trustee's rights under the Notes. The Trustee applied for summary judgment.

Summary judgment was granted by Blair J, who also granted Ukraine permission to appeal. The Court of Appeal held that Ukraine had an arguable defence of duress (defence (iii)), and that if it had not been

justiciable then the claim would have been stayed, but not in respect of its other defences. (The Court of Appeal held that ratification was not suitable for summary determination, but this did not affect the result as Ukraine was bound by the ostensible authority of the Minister of Finance.) The Trustee appeals in respect of defence (iii) and the Court of Appeal's decision that it would have stayed the claim if it was non-justiciable, and Ukraine appeals in respect of defences (i), (ii) and (v) (but not in respect of defence (iv)).

Judgment appealed

[\[2018\] EWCA Civ 2026](#)

Parties

Appellant(s)

The Law Debenture Trust Corporation plc

Respondent(s)

Ukraine

Appeal

Justices

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Kitchin, Lord Carnwath

Hearing start date

11 November 2021

Hearing finish date

11 November 2021

Watch hearing

11 Nov 2021 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

15 March 2023

Neutral citation

[2023] UKSC 11