

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GOVERNMENT TECHNOLOGY	§
SERVICES, INC.,	§
	§
Plaintiff Below,	§ No. 333, 2001
Appellant,	§
	§ Court Below: Superior Court
v.	§ of the State of Delaware in and
	§ for New Castle County
OPTIONAL SYSTEMS	§ C.A. No. 98C-09-203
RESOURCE, INC.,	§
	§
Defendant Below,	§
Appellee.	§

Submitted: December 18, 2001

Decided: February 6, 2002

Before WALSH, BERGER, and STEELE, Justices.

ORDER

This 6th day of February 2002, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) This is an appeal from a decision of the Superior Court, after a bench trial, finding in favor of appellee/defendant below, Optional Systems Resource, Inc. (“Optional”), on a breach of contract claim asserted by appellant/plaintiff below Government Technology Services, Inc. (“GTS”).

(2) In December 1996, GTS purchased eight personal computer servers from Optional that were shipped directly to a GTS customer via Federal Express. At some point in time, the computers were discovered to be severely damaged. GTS alleges that the computers were damaged when they arrived at their initial destination in Amarillo, Texas and that its contract with Optional required Optional to bear the risk of loss. Optional denied that the goods were damaged in transit but argued that, in any event, the risk of loss passed to GTS upon tender of the goods to the common carrier (Federal Express). The Superior Court ruled in favor of Optional, finding that there was insufficient evidence to show that the computers were damaged when they arrived at their initial destination. Secondly, the Superior Court ruled that judgment for Optional was warranted because the parties had not created a valid, enforceable contract under the Uniform Commercial Code.

(3) The Superior Court's decision rendering judgment in favor of Optional because GTS failed to sustain its burden of proving that the computers were damaged in transit is sufficiently supported by the record and the product of an orderly and logical deductive process. *See Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972); *see also Ivanhoe Partners v. Newmont Min. Corp.*, 535 A.2d 1334, 1340-41 (Del. 1987)(on appeal from an entirely paper record, the standard of review requires the

Court to review the record and draw its own conclusions with respect to the facts only if the findings below are clearly wrong and justice requires the Court to do so).

Accordingly, we affirm.

(4) Our affirmance of the Superior Court's factual determination renders unnecessary a review of the Superior Court's alternative finding that the parties never created a valid contract under the Uniform Commercial Code.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh

Justice