

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**WESTERN EXTRALITE CO.,  
APPELLANT**

**vs.**

**SAFECO INSURANCE CO., et al.,  
RESPONDENT**

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DOCKET NUMBER WD70260

DATE: DECEMBER 1, 2009

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Appeal from:

The Circuit Court of Boone County, Missouri  
The Honorable Leslie M. Schneider, Judge

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Appellate Judges:

Division Two: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

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Attorneys:

Stephen O. Griffin, for Appellant

Joel D. Brett, for Respondents

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**WESTERN EXTRALITE CO., APPELLANT**

**v.**

**SAFECO INSURANCE CO., et al., RESPONDENTS**

WD70260

Boone County, Missouri

Before Division Two Judges: Victor C. Howard, P.J., Joseph M. Ellis and Mark D. Pfeiffer, JJ.

Western Extralite Company appeals from a judgment entered in the Circuit Court of Boone County in favor of Freise Construction Company in an action on account filed by Western Extralite.

**REVERSED AND REMANDED.**

**Division Two holds:**

- (1) The weight of the evidence, and Freise's admissions, clearly established the elements of Western Extralite's action on account: (1) that the defendant requested that the plaintiff furnish merchandise or services, (2) plaintiff accepted defendant's offer by furnishing such merchandise or services, and (3) the charges were reasonable.
- (2) Freise lacked authority under the UCC to reject only the ballasts on the light fixtures it ordered from Western Extralite because the ballasts were not a commercial unit. By retaining the light fixtures and merely replacing a part of some of those fixtures, Freise clearly accepted the fixtures under the UCC.
- (3) The fact that Freise did not reject the fixtures does not mean other remedies were not available to it. However, the manner of "self-help" utilized by Freise in refusing to pay the majority of the amount due for the August shipment was clearly improper with regard to problems with the light fixtures contained in an April shipment to Ruzicka Electric, a subcontractor previously employed by Freise. Each shipment was the subject of a different contract. Thus, even assuming that Freise had standing to pursue damages related to the light fixtures shipped by Western Extralite to Ruzicka, Freise had no authority under the UCC to deduct damages related to that shipment from the amount due for the August shipment.
- (4) Since no counterclaim related to the April shipment was included in Freise's answer to the petition and, in fact, neither the petition nor the answer made mention of the April shipment by way of pleading or an affirmative defense, any such damages should not have been considered in this case.

- (5) The record is, at best, unclear as to what portion of the deductions made by Freise related to the August shipment. Regardless, the undisputed evidence establishes that Freise failed to give notice of any problems with the August shipment to Western Extralite within a reasonable time. Accordingly, any claim of damages related thereto was barred under the UCC.
- (6) The cause is remanded for consideration of Western Extralite's claim for interest and attorney's fees.

**Opinion by: Joseph M. Ellis, Judge**

Date: December 1, 2009

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