

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2013

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

UNITED DOMINION REALTY TRUST,  
INC.,

Appellant,

v.

Case No. 5D12-692  
REVISED

PENCO CONSTRUCTION COMPANY, ETC.,  
ET AL.,

Appellee.

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Decision filed March 15, 2013

Appeal from the Circuit Court  
for Orange County,  
Stan Strickland, Judge.

G. Jeffrey Vernis and Stephanie M. Showe,  
of Vernis & Bowling of Palm Beach, P.A.,  
North Palm Beach, for Appellant.

Jeffrey S. Hammer and Griffith J. Winthrop, III,  
of Alvarez, Sambol & Winthrop, P.A., Orlando,  
for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER and BERGER, JJ., concur.  
PERKINS, T. R., Associate Judge, concurs specially, with opinion.

I concur in the opinion of the majority and offer some additional explanation for the decision to affirm dismissal of Appellant's cross-claim against Appellee without leave to amend. The trial court granted summary final judgment in favor of Appellee, finding it was not negligent in its dealings with the Appellant or the injured Plaintiff. That ruling was never challenged or appealed. As a consequence, the Appellant's cross-claims sounding in contribution, negligence or common law indemnity were properly dismissed without leave to amend. See *Murga v. United Prop. & Cas. Ins. Co.*, 941 So. 2d 482, 482 (Fla. 3d DCA 2006) (dismissal is proper where amendment is futile). Although the Appellant now claims that it could have asserted a contractual indemnity claim, it never did. More importantly, Appellant never asked the court for leave to amend its cross-claims. As a result, the trial court properly dismissed the then pending cross-claims with prejudice.