

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2002

THE TOWER GROUP, INC.,

**

Appellant,

**

vs.

**

CASE NO. 3D02-702

THYSSEN ELEVATOR COMPANY,
a Delaware corporation d/b/a
THYSSEN MIAMI ELEVATOR
COMPANY,

**

**

Appellee.

**

LOWER

TRIBUNAL NO. 00-9459

**

Opinion filed August 7, 2002.

An appeal from the Circuit Court for Dade County, Jon I.
Gordon, Judge.

Paul H. Bass, for appellant.

Sheldon R. Rosenthal, for appellee.

Before COPE, GREEN and RAMIREZ, JJ.

PER CURIAM.

The Tower Group, Inc. appeals an order denying exceptions to
a general master's report. We affirm.

First, we see no error with regard to the involuntary

dismissal of the counterclaim. The record does not establish error in the general master's ruling, or the denial of the exception on this point by the trial court.

Second, we decline to order a new trial on the basis of procedural error. At the time the case went to trial before the master, the parties and master had not noticed that the counterclaim had never been answered. The trial took place without any objection that the case was not at issue. The appellant contends that there must be a new trial. We disagree, and conclude that the objection was waived. See Parrish v. Dougherty, 505 So. 2d 646, 648 (Fla. 1st DCA 1987). We do not accept the argument that this is fundamental error.

The appellant relies on Kuvin v. Keller Ladders, Inc. 797 So. 2d 611 (Fla. 3d DCA 2001), but the case is not on point. The question of preservation of the issue for appeal was not discussed in that case.

Affirmed.