United States District Court
For the Northern District of California

1

2

3

4

5   UNITED STATES DISTRICT COURT

6   NORTHERN DISTRICT OF CALIFORNIA

7

8

9

10   OM FINANCIAL LIFE INSURANCE
     COMPANY,

11
                    Plaintiff,   No. C 08-3919 PJH
12
          v.   **ORDER GRANTING DEFENDANT'S**
13   **MOTION FOR SUMMARY JUDGMENT**
     ROSALINA HERNANDEZ,   **AND DENYING PLAINTIFF'S MOTION**
14   **FOR SUMMARY JUDGMENT**
                    Defendant.
15   _____/

16   The parties' cross-motions for summary judgment came on for hearing before this

17   court on November 4, 2009. Plaintiff appeared by its counsel Sean P. Nalty and Shivani

18   Nanda, and defendant appeared by her counsel Len Watkins. Having read the parties'

19   papers and carefully considered their arguments and the relevant legal authority, and good

20   cause appearing, the court hereby GRANTS defendant's motion and DENIES plaintiff's

21   motion as follows for the reasons stated at the hearing.

22   It is undisputed that at the time he refinanced the mortgage on his home, the insured

23   submitted an application for a term life insurance policy (a policy of mortgage insurance) to

24   Fidelity and Guaranty Life Insurance Company, the predecessor of plaintiff OM Financial

25   Life Insurance Company ("OM Financial"); that the policy was issued and that the insured

26   paid the premiums for eight years; that the insured died on June 18, 2008; and that the

27   beneficiary submitted a claim for benefits under the policy. Based on these undisputed

28   facts, the court finds that there was a meeting of the minds between the insured and the

insurer.

Under California Insurance Code § 10113.5(a), the policy was uncontestable after a period of two years from the date of issue. The exception in § 10113.5(b)(1) does not apply, as OM Financial submitted no evidence showing that the insured presented photographic identification during the application process.

IT IS SO ORDERED.

Dated: November 5, 2009

_____
PHYLLIS J. HAMILTON
United States District Judge