2018 IL App (2d) 170548-U

Order filed September 4, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

2018

TIM SHELTON, as Administrator of the Estate of Samuel Shelton, deceased, Plaintiff-Appellant, v. ALLSTATE NORTHBROOK INSURANCE COMPANY and AMICA MUTUAL INSURANCE COMPANY, Defendants (Allstate Northbrook Insurance Company, Defendant-Appellee).	)	Appeal from the Circuit Court of the 16th Judicial Circuit, Kane County, Illinois. Appeal No. 2-17-0548 Circuit No. 16-MR-867 The Honorable David R. Akemann, Judge, presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: In an appeal in an action against an insurance company for declaratory relief, the breach of a settlement contract, and the bad faith refusal to tender insurance proceeds relating to a fatal automobile accident in Colorado and the application of an automobile insurance policy issued in California, the trial court correctly found that: (1) California law applied to the interpretation and application of the insurance policy; (2) under California law, the insurance company was entitled to

a set-off for the amount paid to plaintiff by the at-fault party's insurer; (3) the insurance company was entitled to summary judgment as to the declaratory relief count of plaintiff's complaint, which was directed at the question of whether California law applied and whether the insurance company was entitled to a set-off; (4) there was no meeting of the minds between the insurance company and plaintiff as to a settlement offer the insurance company had made; (5) the parties had not entered into a valid and binding settlement agreement; and (6) the insurance company was entitled to dismissal of the breach of contract and the bad faith refusal counts of plaintiff's complaint since both counts were dependent upon the existence of a valid settlement agreement between the parties. The appellate court, therefore, affirmed the trial court's judgment.

¶ 2 Plaintiff, Tim Shelton, as the administrator of the estate of Samuel Shelton, filed an action in the trial court against defendant, Allstate Northbrook Insurance Company, seeking a declaratory judgment (count I) and alleging the breach of a settlement contract (count IV) and the bad faith refusal to pay insurance proceeds (count V) relating to a fatal traffic accident in Colorado and the application of an automobile insurance policy issued in California.[1] Allstate filed a motion for summary judgment on count I and a motion to dismiss counts IV and V of plaintiff's amended complaint. Plaintiff filed a cross-motion for summary judgment on count I and opposed Allstate's motion to dismiss counts IV and V. After a hearing, the trial court granted Allstate's motions. Plaintiff appeals.[2] We affirm the trial court's judgment.

¶ 3 FACTS

¶ 4 In November 2015, plaintiff's 18-year old son, Samuel Shelton (Sam), was killed in an automobile accident in Colorado that occurred when the vehicle he was riding in collided with a

[1]Amica Insurance Company was also named as a defendant in the amended complaint. The claims against Amica, however, are not at issue in this appeal.

[2]Although the appeal was filed in the Second District, the presiding justice of that district requested that justices from another district be assigned to hear and decide the case. The Illinois Supreme Court, therefore, assigned the justices listed above from the Third District Appellate Court to hear and decide the case. See Ill. S. Ct. R. 22(b) (eff. Jul. 1, 2017); *People v. Ortiz*, 196 Ill. 2d 236, 256 (2001) (recognizing that the Illinois Supreme Court has the power to assign judges to the various divisions and that the supreme court utilizes that power when necessary to assign judges from one district to hear and decide cases originally brought in another district).

vehicle driven by Justin Goshorn. At the time of the accident, Sam was a full-time college student in Colorado, was living at or near the college he attended, and was financially dependent upon his parents. Sam's parents lived in Illinois, and Sam intended to return to Illinois on his breaks from college to visit his family. Sam's parents had an automobile insurance policy through Amica Insurance Company, and Sam and his vehicle were covered by the Amica policy. Sam's vehicle was garaged in Colorado while Sam was at school. In August 2015, when Sam started college in Colorado, his parents notified Amica of the change in where Sam and his vehicle were going to be located. Amica modified its policy to account for those changes and adjusted Sam's parents' premium accordingly.

¶ 5 When the accident occurred, Sam was a passenger in a vehicle driven by his friend, Nicholas Agnone (Nico). Nico was also a full-time college student in Colorado, was living at or near the college he attended, and was financially dependent upon his parents. Nico's parents lived in California, and Nico returned to California on his breaks from college to visit his family. Nico's parents had an automobile insurance policy (the policy at issue in the present case) that had been issued and delivered in California by Allstate through a California agent. The policy covered four vehicles (the one that Nico was using at the time of the accident, the vehicles of Nico's two parents, and one other vehicle) and four drivers (Nico, his two parents, and one other person). Nico's vehicle (the one he was using at the time of the accident) was registered in California, and Nico had a California driver's license. While Nico was at college, his vehicle was garaged in Colorado. Nico's parents did not inform Allstate that Nico was going to be attending college in Colorado or that Nico was going to have his vehicle in Colorado while school was in session, and there was arguably nothing in the Allstate policy that specifically required Nico's parents to provide Allstate with that information. The Allstate policy had

underinsured motorist coverage of $250,000 per person and $500,000 per collision and provided for a set-off in favor of Allstate as to any amount paid to an insured by or on behalf of the owner or operator of an underinsured motor vehicle as the result of a covered accident.

¶ 6 The driver of the other vehicle, Justin Goshorn, was the at-fault party in the Colorado accident. Goshorn was a Colorado resident and was covered by an automobile insurance policy issued by Safeco Insurance Company. The liability limit for the Safeco policy was $100,000 per person and $300,000 per collision.

¶ 7 After the accident occurred, plaintiff filed a claim against the Allstate insurance policy seeking to recover under the policy's underinsured motorist coverage. As plaintiff and Allstate were negotiating, Safeco offered to settle plaintiff's wrongful death claim against Goshorn and offered plaintiff the $100,000 policy limit in exchange for a release of plaintiff's claim. During that same time frame, Allstate offered plaintiff a proceeds payment of $150,000 to settle plaintiff's claim as to the underinsured motorist coverage under the Allstate policy. The payment from Allstate was to be made to plaintiff after Allstate received proof that Safeco had paid its $100,000 policy limit. With Allstate's consent, and allegedly based upon Allstate's promise to pay plaintiff the $150,000 in insurance proceeds, plaintiff accepted the payment from Safeco and released his wrongful death claim against Goshorn. Plaintiff submitted proof of Safeco's payment, but Allstate failed or refused to pay the $150,000 to plaintiff that it had allegedly promised to pay.

¶ 8 In August 2016, plaintiff filed the instant action against Allstate in the trial court in Illinois. As to Allstate, the original complaint sought only a declaratory judgment. Plaintiff later filed an amended complaint in December 2016 and added counts against Allstate for failing to pay the $150,000 in insurance proceeds. More specifically, in count I of the amended complaint,

plaintiff sought a declaratory judgment from the trial court that Colorado law applied in interpreting the Allstate policy and that Allstate was not entitled to a set-off for the payment that plaintiff had received from Safeco on behalf of Goshorn (that the maximum amount still available to plaintiff for underinsured motorist coverage under the Allstate policy was $250,000). In count IV of the amended complaint, plaintiff alleged that Allstate had breached a settlement contract that it had entered into with plaintiff by failing or refusing to pay plaintiff the $150,000 in insurance proceeds. In count V of the amended complaint, plaintiff alleged that Allstate had acted in bad faith by failing or refusing to tender the $150,000 payment to plaintiff within 30 days after the insurance claim was no longer in dispute.

¶ 9 Allstate filed a motion for summary judgment on count I and a motion to dismiss counts IV and V of the amended complaint. Plaintiff filed a cross-motion for summary judgment on count I of the amended complaint and opposed Allstate's motion to dismiss counts IV and V. Allstate and plaintiff filed numerous documents in support of their motions, including the Allstate insurance policy and some of the correspondence between the parties. In addition, the parties filed written briefs or other pleadings in support of their positions.

¶ 10 Of special relevance to this appeal are three of the supporting documents, a letter from a date in April 2016 from Allstate's coverage counsel to plaintiff's attorney (the first letter), an email from a date in June 2016 from plaintiff's attorney to a person at Allstate (the email), and a letter from a date in February 2017 from Allstate's coverage counsel to plaintiff's attorney (the second letter). In the first letter, dated April 2016, coverage counsel offered to settle plaintiff's claim as to the underinsured motorist benefits of the Allstate policy for $150,000. Coverage counsel noted in the letter that for the underinsured motorist coverage to apply, plaintiff had to first receive the proceeds payment from Safeco for the maximum Safeco policy limit and tender

proof of that payment to Allstate. In addition, coverage counsel pointed out very specifically in the letter that Allstate was entitled to a set-off for the $100,000 Safeco payment and that the maximum underinsured motorist benefit to the plaintiff under the Allstate policy was $150,000. Coverage counsel stated further that "Allstate agree[d] that, once Safeco [paid] its policy limit, Allstate [would] pay a total sum of $150,000 to all persons who [had] a right to maintain a wrongful death claim for Sam Shelton's death."

¶ 11 In the email, dated June 2016, from plaintiff's attorney to the person from Allstate, plaintiff's attorney acknowledged that Allstate had taken the position that it was entitled to a set-off (described in the email as a credit) and that only $150,000 of coverage was available to plaintiff in satisfaction of plaintiff's underinsured motorist claim under the Allstate policy. Plaintiff's attorney indicated that he had attached to the email proof of payment by Safeco and requested that Allstate pay the $150,000 in insurance proceeds to plaintiff. Plaintiff's attorney also stated in the email, however, that by accepting payment from Allstate, plaintiff was not agreeing that Allstate was entitled to a set-off.

¶ 12 In the second letter, dated February 2017, Allstate's coverage attorney acknowledged that Allstate had not paid plaintiff the $150,000 in insurance proceeds and that plaintiff had made additional claims against Allstate in his amended complaint (the breach of settlement contract claim and the bad faith refusal claim). Allstate's coverage attorney represented that the $150,000 amount was not paid to plaintiff because the coverage attorney had learned after the offer was made that other people were making claims against the insurance proceeds related to the accident. Allstate's coverage attorney represented further that Allstate had contacted the other claimants and that the other claimants were not willing to agree to the payment of the $150,000

in insurance proceeds to plaintiff. Allstate's coverage attorney did not state anything in the letter about the disagreement between Allstate and plaintiff on the issue of set-off.

¶ 13 In May 2017, a hearing was held on the pending motions. After listening to the oral arguments of the attorneys, the trial court took the case under advisement. Two months later, the trial court issued its written decision. In its decision, the trial court found that: (1) under a choice-of-law analysis, the law of California—and not Colorado—applied to the interpretation and application of the underinsured motorist provision of the Allstate policy and the determination of whether Allstate was entitled to a set-off for the payment that Safeco had made to plaintiff on behalf of Goshorn; (2) based upon California law, Allstate was entitled to a set-off; (3) Allstate and plaintiff had not had a meeting of the minds as to Allstate's settlement offer; and (4) Allstate and plaintiff had not reached a valid and enforceable settlement agreement. The trial court, therefore, granted Allstate's motion for summary judgment on count I and its motion to dismiss counts IV and V of plaintiff's amended complaint. Plaintiff appealed.

¶ 14 ANALYSIS

¶ 15 I. The Trial Court's Grant of Summary Judgment for Allstate on Count I of Plaintiff's Amended Complaint

¶ 16 As his first point of contention on appeal, plaintiff argues that the trial court erred in granting Allstate's motion for summary judgment on count I of the amended complaint, the declaratory judgment claim, and in denying plaintiff's cross-motion for the same relief. In support of that argument, plaintiff asserts that under an appropriate choice-of-law analysis, Colorado law applies to the interpretation and application of the Allstate policy in this case and that Allstate, therefore, is not entitled to a set-off for the amount paid to plaintiff by Safeco on behalf of Goshorn. Plaintiff maintains that Colorado law applies because Colorado has more significant contacts than California with the transaction and occurrence at issue and because

Colorado has a strong public policy in favor of maximizing underinsured motorist coverage benefits. Plaintiff asks, therefore, that we reverse the trial court's grant of summary judgment for Allstate on count I of the amended complaint and that we enter summary judgment for plaintiff on count I instead.

¶ 17 Allstate argues that the trial court's grant of summary judgment for Allstate on count I of the amended complaint was proper and should be upheld. Allstate asserts that the law of California applies to the interpretation and application of the insurance policy in this case—not the law of Colorado—and that Allstate is, therefore, entitled to a set-off. For that reason, Allstate asks that we affirm the trial court's grant of summary judgment for Allstate on count I of plaintiff's amended complaint.

¶ 18 The purpose of summary judgment is not to try a question of fact, but to determine if one exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. See 735 ILCS 5/2-1005(c) (West 2016); *Adams*, 211 Ill. 2d at 43. Summary judgment should not be granted if the material facts are in dispute or if the material facts are not in dispute but reasonable persons might draw different inferences from the undisputed facts. *Adams*, 211 Ill. 2d at 43. Although summary judgment is to be encouraged as an expeditious manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt. *Id.* In appeals from summary judgment rulings, the standard of review is *de novo*. *Id.* In addition, a trial court's ruling on a choice-of-law issue is also subject to *de novo* review on appeal. *Bridgeview Health Care Center, Ltd. v. State Farm*

Fire & Casualty Co., 2014 IL 116389, ¶ 14. When *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 43. A trial court's grant of summary judgment may be affirmed on any basis supported by the record. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004).

¶ 19 When called upon to resolve a case in which multiple states have an interest, the trial court may be required to conduct a choice-of-law analysis to determine which state's law will control the resolution of the issue presented. See *G.M. Sign, Inc. v. Pennswood Partners, Inc.*, 2015 IL App (2d) 121276-B, ¶ 28. Such an analysis should only be performed, however, if there is a conflict between the laws of the states involved as to the specific issue. See *Bridgeview Health Care Center, Ltd.*, 2014 IL 116389, ¶ 14. A conflict exists if the difference in the laws of the states involved is such that the selection of one state's laws over the other's will result in a different outcome on that issue. See *id.* The party seeking the choice-of-law determination has the burden of demonstrating that a conflict exists. *Id.* If a conflict between the laws has been established, the trial court must then conduct a choice-of-law analysis and determine which state's law should be applied. See *id.* In performing such an analysis, the trial court will generally use the choice-of-law rules of its own state (the forum state). *G.M. Sign, Inc.*, 2015 IL App (2d) 121276-B, ¶ 28.

¶ 20 In Illinois, the forum state in the present case, courts follow the Restatement (Second) of Conflict of Laws (1971) in making choice-of-law decisions. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 568 (2000). Under the Restatement, when a contract claim is involved, the trial court will apply the most-significant-contacts test to determine which state's law will govern the resolution of the issue. See Restatement (Second) of Conflict of Laws §§

188, 193 (1971); *Westchester Fire Insurance Co. v. G. Heileman Brewing Co.*, 321 Ill. App. 3d 622, 628 (2001). Pursuant to that test as tailored to an insurance policy contract, the trial court will look to the following factors to determine which state has the most significant contacts: (1) the location of the insured risk (the subject matter of the contract); (2) the place of delivery of the insurance policy; (3) the domicile of the insured or of the insurer; (4) the place of the last act to give rise to a valid insurance policy; and (5) the place of performance, or other place bearing a rational relationship to the general insurance policy. See Restatement (Second) of Conflict of Laws §§ 188, 193 (1971); *Hofeld v. Nationwide Life Insurance Co.*, 59 Ill. 2d 522, 528 (1975); *G.M. Sign, Inc.*, 2015 IL App (2d) 121276-B, ¶ 39; *Westchester Fire Insurance Co.*, 321 Ill. App. 3d at 628-29. The factors should be evaluated in light of the relevant public policies of the forum state and the other states involved, along with the involved states' interests in the particular issue presented. See Restatement (Second) of Conflict of Laws § 6(2) (1971); *Westchester Fire Insurance Co.*, 321 Ill. App. 3d at 629. In addition, consideration should also be given to the justified expectations of the parties, to the predictability and uniformity of the result, and to the ease in the determination and application of the law to be applied. See Restatement (Second) of Conflict of Laws § 6(2) (1971); *G.M. Sign, Inc.*, 2015 IL App (2d) 121276-B, ¶ 39.

¶ 21 The factors set forth above, however, are not given equal significance and are to be weighed by the trial court according to the issue involved. See Restatement (Second) of Conflict of Laws §§ 188, 193 (1971); *G.M. Sign, Inc.*, 2015 IL App (2d) 121276-B, ¶ 39. When the issue presented pertains to the interpretation or application of an insurance policy, the location of the insured risk will generally be given greater weight than any other single factor in determining which state's substantive law will apply, provided that the risk can be located, at least

principally, in a single state. Restatement (Second) of Conflict of Laws § 193, comment b (1971); *Diamond State Insurance Co. v. Chester-Jensen Co.*, 243 Ill. App. 3d 471, 488 (1993). More specifically, in a case where the trial court is performing a choice-of-law analysis as to the terms of an automobile insurance policy, the state where the parties intended the vehicle in question to be principally located (the location of the insured risk) will govern, unless some other state has a more significant relationship to the transaction, even if the vehicle is occasionally located somewhere else. See Restatement (Second) of Conflict of Laws § 193, comment b (1971); *Costello v. Liberty Mutual Fire Insurance Co.*, 376 Ill. App. 3d 235, 242 (2007).

¶ 22 In the present case, it is readily apparent that a conflict exists between the law of the states involved. If Colorado law is applied, Allstate is not entitled to a set-off for the amount that plaintiff received from Safeco, since Colorado law prohibits such a set-off. See Colo. Rev. Stat. § 10-4-609(1)(c) (West 2016). If California law is applied, however, Allstate is entitled to a set-off since California law allows Allstate to take a set-off and since the policy itself provides that a set-off would be applied. See Cal. Ins. Code § 11580.2(p)(4) (West 2016). A choice-of-law analysis, therefore, is required. See *Bridgeview Health Care Center, Ltd.*, 2014 IL 116389, ¶ 14.

¶ 23 Because the underlying claim is one of contract, we apply the most-significant-contacts test to determine whether Colorado or California substantive law will govern the resolution of this issue. See Restatement (Second) of Conflict of Laws §§ 188, 193 (1971); *Westchester Fire Insurance Co.*, 321 Ill. App. 3d at 628. When we apply that test under the facts of the present case, we find that California has more significant contacts with the transaction and occurrence than Colorado. The insurance policy was negotiated, issued, and delivered in California; the last act giving rise to the existence of a valid policy—whether it was the payment of the premium or the issuance of the policy itself—took place in California; the primary insureds, Nico's parents,

lived in California; and Nico's permanent residence, as indicated by his driver's license and vehicle registration, was in California. None of those matters are in dispute.

¶ 24 The only factor in dispute is the location of the insured risk, but it is the intended primary location that controls and that is given the greatest weight in the most-significant-contacts analysis. See Restatement (Second) of Conflict of Laws § 193, comment b (1971); *Costello*, 376 Ill. App. 3d at 241. Under the facts of the present case and contrary to plaintiff's assertion, the primary risk or subject matter of the policy was located in California. The policy at issue was an automobile insurance policy. California was where most or all of the drivers covered by the policy permanently resided and where most or all of the vehicles listed in the policy were permanently located or registered. The policy in question was negotiated and issued with those facts in mind. The fact that Nico took up temporary residence in Colorado while attending college and that his vehicle, unbeknownst to Allstate, was located in Colorado during those time periods does not shift the balance in favor of applying Colorado law; nor does the fact that the accident took place in Colorado, when all of the other factors weigh heavily in favor of applying California law. See Restatement (Second) of Conflict of Laws §§ 188, 193 (1971); *Costello*, 376 Ill. App. 3d at 240-41. Furthermore, even though Colorado has a strong public policy in favor of maximizing underinsured motorist coverage benefits, that policy interest is no greater than California's interest in protecting the contract rights of its residents.

¶ 25 Based upon our analysis above, we find that the trial court correctly concluded that California law, and not Colorado law, applied to the interpretation and application of the Allstate insurance policy at issue and that Allstate was, therefore, entitled to a set-off for the amount paid to plaintiff by Safeco. Thus, the trial court properly granted summary judgment for Allstate on

count I, the declaratory relief count, of plaintiff's amended complaint, and we affirm that portion of the trial court's ruling.

¶ 26 II. The Trial Court's Grant of Allstate's Motion to Dismiss Counts IV and V of Plaintiff's Amended Complaint

¶ 27 As his second and final point of contention on appeal, plaintiff argues that the trial court erred in granting Allstate's section 2-619 motion to dismiss the breach of settlement contract claim (count IV) and the bad faith refusal claim (count V) of plaintiff's amended complaint. As to the breach of contract claim, plaintiff asserts that dismissal should not have been granted for Allstate because the pleadings and the parties' correspondence showed that there was a meeting of the minds between the parties, that the parties had entered into a valid and binding settlement contract, that plaintiff satisfied his requirements under the contract, and that Allstate breached the contract by failing to make payment of the $150,000 in insurance proceeds as it had promised. At the very least, plaintiff contends, the letter sent in February 2017 by Allstate's coverage counsel—which indicated that Allstate breached its promise to pay the $150,000 to plaintiff because coverage counsel had later learned that other claims were being made against the policy proceeds and showed that Allstate's refusal to pay had nothing to do with plaintiff's position on set-off—created a genuine issue of material fact as to whether there was a meeting of the minds between the parties regarding the settlement agreement. As to the bad faith refusal claim, plaintiff asserts that assuming a valid settlement contract existed between the parties, the February 2017 letter also created a genuine issue of material fact as to whether Allstate acted in bad faith in refusing to tender the insurance proceeds. Thus, plaintiff asserts that the trial court should not have granted Allstate's motion to dismiss plaintiff's bad faith refusal claim. Plaintiff asks, therefore, that we reverse the trial court's grant of Allstate's motion to dismiss and that we

remand this case for further proceedings, so that plaintiff can pursue his breach of settlement contract and bad faith refusal claims in the trial court.

¶ 28 Allstate argues that the trial court's grant of Allstate's motion to dismiss counts IV and V of plaintiff's amended complaint was proper and should be upheld. Allstate asserts that as the trial court found, the parties' correspondence showed that Allstate made an offer of $150,000 to settle plaintiff's claim in full; that plaintiff rejected that offer and made a counteroffer that would allow plaintiff to receive the proposed payment but still challenge Allstate's right to a set-off; that Allstate did not accept the counteroffer; and that there was, therefore, no meeting of the minds between the parties as to the settlement contract. As evidence of plaintiff's counteroffer, Allstate points to the June 2016 letter from plaintiff's attorney. Allstate also notes that the February 2017 letter from Allstate's coverage attorney, upon which plaintiff relies, was not issued until several weeks after plaintiff had filed the amended complaint. Allstate asserts further that because plaintiff's bad faith refusal claim was dependent upon there being a valid settlement contract, which the evidence showed did not exist, the trial court properly dismissed that claim as well. For those reasons, Allstate asks that we affirm the trial court's grant of Allstate's motion to dismiss counts IV and V of plaintiff's amended complaint.

¶ 29 In reply, plaintiff contends that he accepted Allstate's offer of $150,000 and, contrary to Allstate's assertion, did not make a counteroffer. According to plaintiff, the parties' correspondence indicates that Allstate's offer of $150,000 was not contingent upon plaintiff agreeing to a set-off. Thus, the position taken by plaintiff's attorney in the June 2016 email on the issue of set-off did not change any of the material terms of the agreement and did not constitute a counteroffer. Plaintiff again asks, therefore, that we reverse the trial court's grant of

Allstate's motion to dismiss counts IV and V of the amended complaint and that we remand this case for further proceedings on those counts.

¶ 30 Section 2-619 of the Code of Civil Procedure allows a litigant to obtain an involuntary dismissal of an action or claim based upon certain defects or defenses. See 735 ILCS 5/2-619 (West 2016). The statute's purpose is to provide litigants with a method for disposing of issues of law and easily proven issues of fact early in a case, often before discovery has been conducted. See *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003); *Advocate Health & Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004). In a section 2-619 proceeding, the moving party admits the legal sufficiency of the complaint, but asserts an affirmative defense or other matter to defeat the nonmoving party's claim. *Van Meter*, 207 Ill. 2d at 367. Section 2-619 lists several different grounds for which an involuntary dismissal may be granted. See 735 ILCS 5/2-619(a)(1) to (a)(9) (West 2016). Under subsection (a)(9), the subsection that applies in this case, a litigant may obtain an involuntary dismissal of a claim asserted against him if the claim is barred by other affirmative matter, which avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9) (West 2016). An affirmative matter is something in the nature of a defense which negates the cause of action completely. *Van Meter*, 207 Ill. 2d at 367. In ruling upon a section 2-619 motion to dismiss, the court must construe all of the pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* at 367-68. On appeal, a dismissal pursuant to section 2-619 is reviewed *de novo*. *Id.* at 368. As noted above, when *de novo* review applies, the appellate court performs the same analysis that the trial court would perform. *Beltran*, 2013 IL App (1st) 121128, ¶ 43. A trial court's grant of a motion to dismiss a complaint may be affirmed on any basis supported by the record. *Board*

of Trustees of Community College, District No. 508, County of Cook v. Coopers & Lybrand LLP, 296 Ill. App. 3d 538, 543 (1998).

¶ 31 In the present case, upon reviewing the record, we agree with Allstate, that the supporting documents show that there was no meeting of the minds between the parties as to the settlement agreement. Rather, as Allstate suggests and the trial court correctly found, in the June 2016 email from plaintiff's attorney to Allstate, plaintiff rejected Allstate's offer of $150,000 to settle the matter in full and proposed, instead, a counteroffer of receipt of the payment and the ability to still challenge Allstate's right to a set-off. There is no indication that Allstate ever accepted plaintiff's counteroffer. Because there was no meeting of the minds between the parties, a valid and enforceable settlement contract did not exist. See *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 837-38 (2005) (recognizing that for a contract to be binding and enforceable there must be an offer, acceptance, and a meeting of the minds between the parties as to the terms of the contract). Thus, the trial court properly granted Allstate's section 2-619 motion to dismiss plaintiff's breach of contract claim (count IV) and his bad faith refusal claim (count V), both of which were dependent upon the existence of a valid settlement contract. We, therefore, affirm that portion of the trial court's ruling as well.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 34 Affirmed.