

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D34075
Y/kmb

_____AD3d_____

Argued - January 30, 2012

DANIEL D. ANGIOLILLO, J.P.
JOHN M. LEVENTHAL
LEONARD B. AUSTIN
SHERI S. ROMAN, JJ.

2011-01386

DECISION & ORDER

Wilman Restrepo, respondent, v Home Depot
U.S.A., Inc., appellant.

(Index No. 19692/08)

D'Amato & Lynch, LLP, New York, N.Y. (Arturo M. Boutin of counsel), for appellant.

Peña & Kahn, PLLC, Bronx, N.Y. (Benjamin J. Wolf and Diane Welch Bando of counsel), for respondent.

In an action, inter alia, to recover damages for false arrest and false imprisonment, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (Nahman, J.), dated December 13, 2010, as denied that branch of its motion which was for summary judgment dismissing the causes of action to recover damages for false arrest, false imprisonment, assault, battery, and violation of civil rights.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Supreme Court properly denied that branch of the defendant's motion which was for summary judgment dismissing the causes of action to recover damages for false arrest, false imprisonment, assault, battery, and violation of civil rights based upon the defense afforded to merchants under General Business Law § 218. Since the defendant failed to eliminate all triable issues of fact as to whether it had reasonable grounds to detain the plaintiff, whether the detention was conducted in a reasonable manner, and whether the detention was for a reasonable duration, it failed to demonstrate its prima facie entitlement to judgment as a matter of law dismissing those causes of action (*see* General Business Law § 218; *Sada v Kohl's Dept. Stores, Inc.*, 79 AD3d 1121;

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Muza v Niketown N.Y., 278 AD2d 13; *Haggerty v Federated Dept. Stores*, 65 AD2d 617). Accordingly, that branch of the defendant's motion was properly denied regardless of the sufficiency of the opposing papers (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

ANGIOLILLO, J.P., LEVENTHAL, AUSTIN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court