

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHERYL AVENT,)	
)	
Plaintiff,)	
)	
v.)	No. 01-2712-GV
)	
S.T.S., INC.,)	
)	
Defendant.)	

ORDER DENYING DEFENDANT'S MOTION FOR SANCTIONS

Before this court is the January 15, 2002 motion of the defendant S.T.S., Inc. for sanctions against the plaintiff, Cheryl Avent, pursuant to Rule 11 of the Federal Rules of Civil Procedure. Avent filed a complaint against S.T.S. for sexual discrimination, for a sexually hostile work environment and for retaliation under Title VII of the Civil Rights Act of 1964 and the Tennessee Human Rights Act. S.T.S. contends that Avent's claim of a sexually hostile work environment is meritless, the claim should be dismissed, and S.T.S. should be awarded attorney fees and costs it incurred in procuring the dismissal as sanctions.

Under Rule 11, a pleading may be signed by counsel and presented to the court if "an attorney . . . is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances . . . the

allegations and other factual contentions . . . are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed. R. Civ. P. 11. The attorney is simply certifying to the court that "there is (or likely will be) 'evidentiary support' for the allegation, not that the party will prevail with respect to its contention regarding the fact." Rule 11, *Comment*, 1993 Amendments. It is important to note that a motion for Rule 11 sanctions is not to be sought "to intimidate an adversary into withdrawing contentions that are fairly debatable." *Id.* The court is not to employ hindsight as a guide, but rather it is to assess the attorney's level of knowledge at the time the complaint was filed, taking into account that the complaint could be based solely on information provided by the party and other factors beyond the attorney's immediate control. *Id.*

S.T.S. acknowledges that a subjective standard is used to determine the existence of a hostile work environment. (Mem. in Supp. of Def's Mot. for Sanctions at 3.); see *Black v. Zaring Holmes, Inc.*, 104 F.3d 822, 826 (6th Cir. 1997). This standard involves the victim's perception of the treatment. *Black*, 104 F.3d at 826. In the present case, the complaint alleges generally that Avent was subjected to lewd comments and unwarranted sexual advances continually over a period time. From the pleadings alone, the court is unable to discern at this time the frequency and

duration of the comments and advances, whether they were humiliating to Avent, and what effect the comments and advances had on Avent. There may ultimately be evidentiary support for these allegations. Thus, the court does not find the claim sanctionable at such an early stage in this proceeding, and the defendant has given this court no reason to impose sanctions on Avent.

Moreover, S.T.S.'s Rule 11 motion is directed only to Avent's claim of a hostile environment. Avent also claims sexual discrimination for failure to promote and retaliation. The retaliation claim is directly based on Avent's complaint to the EEOC regarding the sexually offensive/hostile work environment conduct. Based on the pleading as a whole, the court does not find the complaint sanctionable.

At this time, the defendant's motion for sanctions is denied.

IT IS SO ORDERED this 11th day of February, 2002.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE