

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

CAROL PARKS,
Defendant.

Case No. CR00-7

**ORDER GRANTING
PLEA IN ABATEMENT**

DATE OF HEARING: February 17, 2000.

DATE OF DECISION: February 25, 2000.

APPEARANCES:

For plaintiff: Thomas P. Herzog, Holt County Attorney.
For defendant: Rodney W. Smith, Holt County Public Defender, with defendant.

SUBJECT OF ORDER: Defendant's plea in abatement.

FINDINGS: The court finds and concludes that:

1. The knowledge of Electrolux's agent precludes the possibility of the defendant having any intent to deceive or harm Electrolux. The plaintiff presented no evidence to negate any express authority to sign or apparent authority to sign arising from the marital relationship between the defendant (Carol) and alleged victim from John Parks (John). The mere receipt of a complaint from John by a law enforcement officer does not show that John had not expressly or apparently authorized Carol to sign. The testimony that the Carol told the salesman that the Carol would tell John later is equally consistent with the presence or absence of express authority and more consistent with apparent authority than the absence of apparent authority.

2. There was not sufficient evidence to support a determination that a crime had been committed and probable cause to believe that defendant committed the crime. The plea in abatement should be sustained.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

- 1. The plea in abatement is sustained.
- 2. The information is dismissed without prejudice at plaintiff's cost.

If checked, the Court Clerk shall:

Mail a copy of this order to all counsel of record and to any pro se parties.

Done on _____, 20____ by _____.

Note the decision on the trial docket as: Signed "Order Granting Plea in Abatement" entered.

Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel, District Judge