

1 misappropriation of trade secrets, and replevin. Plaintiffs seek injunctive and declaratory
2 relief, as well as compensatory and punitive damages.

3 Plaintiffs do not assert new or separate causes of action against Quale and Fyfe in the
4 proposed amended complaint, but instead include them in the generic definition of
5 “defendants.” The only allegation specific to Quale and Fyfe is that they “had personal
6 motives and interest in the demise of Plaintiffs separate and distinct from those of Compass
7 in that both have prior dealings with the successor insurance administrator and hostility.”
8 Amended Complaint ¶ 17. In their motion to amend, they contend that “Fyfe and Quale
9 personally orchestrated the entire scheme upon which the Complaint is based.” Motion at
10 4.

11 Without reference to a specific cause of action, defendants argue broadly that the
12 proposed amendment does not raise cognizable claims against Quale or Fyfe because the
13 plaintiffs do not contend that Quale and Fyfe acted outside the scope of their employment.
14 They argue, therefore, that the amendment would be futile and must be denied. We disagree.

15 Under Arizona law, corporate directors may be personally liable for torts committed
16 by the corporation if they “participate or have knowledge amounting to acquiescence or [are]
17 guilty of negligence in the management and supervision of the corporate affairs causing or
18 contributing to the injury.” Jabczenski v. S. Pac. Mem’l Hosps., 119 Ariz. 15, 20, 579 P.2d
19 53, 58 (Ct. App. 1978). Individual director liability for personal participation in tortious acts
20 may be imposed even though the acts were performed solely for the benefit of the
21 corporation. Id. The same is true with corporate employees. An employee is subject to
22 liability for harm caused by his own tortious conduct, even where the employee acts within
23 the scope of employment. Restatement (Third) of Agency § 7.01 (2006); Estate of Walton,
24 164 Ariz. 498, 500, 794 P.2d 131, 133 (1990) (holding that in the absence of Arizona law to
25 the contrary, courts will apply the Restatement).

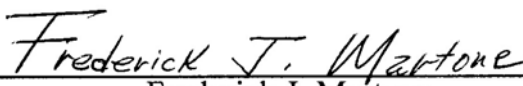
26 Plaintiffs assert tort claims of interference with contract, conversion, and
27 misappropriation of trade secrets against Quale and Fyfe. While the amended complaint is
28 lacking in particularity regarding the specific acts taken by Quale and Fyfe, we conclude that

1 the amended complaint sufficiently raises cognizable claims. For example, in Southern
2 Union Co. v. Southwest Gas Corp., 165 F. Supp. 2d 1010, 1038 (D. Ariz. 2001), the court
3 recognized that an employee may be liable for interference with an employer's contract
4 where his actions were contrary to the corporation's interests. In Jabczenski, 119 Ariz. at 20,
5 579 P.2d at 58, the court held that an officer of corporation may be liable for conversion of
6 plaintiff's property even though the act was done on behalf of the corporation. Finally, in
7 Chanay v. Chittenden, 115 Ariz. 32, 39, 563 P.2d 287, 294 (1977), the court recognized that
8 an employee may be personally liable for misappropriation of trade secrets performed on
9 behalf of his employer. With respect to these theories of tort liability, the employee did not
10 escape personal liability simply because he was acting within the scope of his employment.

11 We conclude that plaintiffs have adequately asserted cognizable claims against Quale
12 and Fyfe, and accordingly that their proposed amendment is not futile. We note that while
13 the circumstances of plaintiffs' motion to amend, filed after our denial of plaintiffs'
14 application for temporary restraining order (doc. 18), is somewhat suspect, we nevertheless
15 conclude that amendment is appropriate. The motion to amend was made within the deadline
16 set by our Rule 16 scheduling order, (doc. 28) and at least on its face we cannot conclude that
17 the claims are futile.

18 **IT IS ORDERED GRANTING** plaintiffs' motion for leave to amend (doc. 37).
19 Because the amendment divests us of diversity jurisdiction, we remand this case to the
20 Superior Court of Arizona in Maricopa County, pursuant to 28 U.S.C. § 1447(c). Because
21 plaintiffs are responsible for this remand, they are not entitled to costs and fees associated
22 with the removal.

23 DATED this 24th day of September, 2008.

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Frederick J. Martone
United States District Judge