

In late 2004, **Andy Sanborn** slashed the prices on his bike and ski equipment at Banagan's and announced he was closing shops in Concord, Keene and Lebanon and retiring. Sanborn soon returned with a new venture: The Draft, a bar and restaurant on Concord's Main Street.

But more than three years later, many dealers who had equipment in Sanborn's ski and bike shops are still waiting to get paid. That's because those dealers took Banagan's to bankruptcy court in the middle of Sanborn's "Going Out of Business" sale, saying they feared they'd never be paid without the court's oversight.

When the bankruptcy case is settled next month, Sanborn and those waiting for payment are expected to get about 5.3 percent - at best - of what they are owed, according to court records. Sanborn said last week he'll lose the most, given that he and his wife are out \$384,000, according to bankruptcy records. But others will lose plenty: The company has \$31,000 to cover nearly \$600,000 in claims from other companies, according to the records.

The bankruptcy case is concluding just as Sanborn, a Republican from Henniker, is mounting a bid for the state Senate seat held by Sen. Harold Janeway, a Webster Democrat. Sanborn is running on a platform of fiscal responsibility against what he described last week as "out of control" spending by Democrats.

Sanborn said he hopes voters won't hold the bankruptcy case against him.

The way Sanborn sees it, he would have been able to pay his creditors all they were owed from the proceeds of his closing sale. But he had to stop that sale two months in because a few of his bigger creditors initiated bankruptcy proceedings against him. Sanborn said those creditors forced him into court only after he refused to pay them in full before he paid every other creditor.

"To me that isn't fair," Sanborn said. "This (involuntary bankruptcy case) shows my willingness to take a stand against big business when I have to. Unfortunately, we went from a situation where everyone would get paid to one where most nobody got paid (what they were owed), including ourselves."

He continued: "I think this shows that I will stand up for the little guy."

Jack White, the Nashua lawyer who took Banagan's to bankruptcy court on behalf of four equipment dealers, has disputed that argument in court filings. And he did so again when reached last week.

"We look back and think (Sanborn) badly miscalculated the probability of paying back Banagan's unsecured trade creditors a substantial dividend," White said. "He miscalculated his inventory values . . . as well as the retail sales projections. What he represented for projected results, in hindsight, was highly suspect and did not come close to fruition."

White isn't convinced that even Sanborn believed he could pay all his debts with a closing sale. He said he thinks Sanborn's main goal was, instead, to make enough money in the closing sale to pay off his bank loan, for which he was personally liable. Once the case landed in bankruptcy court, White said, the bank had to stand in line for payment along with the other companies owed money. And Sanborn became responsible for any part of the bank loan left unpaid.

The bankruptcy court records do not resolve that dispute, and the court-appointed lawyers who are overseeing the case did not return calls last week. Sanborn and White will likely continue to see things differently. But there was a brief time they worked together.

"Retiring while I can"

Sanborn's decision to retire in November 2004 surprised his business peers and disappointed his customers. He and his wife, Laurie, had been running the bike and ski shops for nearly 15 years but said then that

Sanborn's serious health problems made it necessary for them to retire. (Sanborn declined to specify the health problems then and again last week, but he said he's now healthy.)

On the eve of his closing sale, Sanborn told the Monitor, "I want to take my wife away and reward her for being my wife. I want to live the American dream: retiring while I can." The sale began at the start of the ski season, just as new equipment was arriving, and Sanborn promised his customers good deals.

Sanborn didn't say so at the time, but this week he said his suppliers of ski equipment knew about and agreed to the closing sale. "I consulted these (businesses) and brought in an expert financial people to handle the sale," he said. "We were trying to be as responsible as we could. Everyone knew about the plan and felt strongly that everyone would get paid."

White recalls that time period differently. He said his clients - ski and snowboard makers Burton, Salomon, K2 and Red Corps. - discovered Banagan's was having a closing sale only after it was underway. The timing struck them as "suspect," White said, because it was the start of ski season and Sanborn had just received shipments of expensive equipment.

Burton alone had just provided Sanborn with \$225,000 in products, White said. "We wanted to know what was going on because we were worried about Banagan's financial solvency," White said. White continued: "He certainly didn't tell us when he demanded product shipment in the summer (and) fall of 2004 that he was going out of business. They would not have sent it or at least sent it (cash on delivery.)"

White and his clients met with Sanborn and his lawyers in mid-November 2004. At that meeting, White recalled Sanborn explaining that his bank was demanding payment on his business loan. The closing sale, White recalls Sanborn saying, would pay off that loan and the other business debts.

White said his clients were skeptical and ready to file an "involuntary petition" against Banagan's then, thereby forcing Banagan's into Chapter 7 bankruptcy. Doing so, would allow the bankruptcy court to freeze Banagan's business activities and disburse the remaining assets among everyone owed money.

Sanborn persuaded them to hold off on going to court, White said, and allow him to proceed with the closing sale. White said Sanborn claimed to have \$1.5 million in inventory and predicted he could sell it for \$2.6 million. The \$1.1 million in proceeds would cover the nearly \$700,000 Banagan's owed.

White said his clients remained skeptical when they inspected one of Sanborn's three stores and found far less inventory than what Sanborn claimed to have. Sanborn reassured the companies, White said. "He indicated that one store was not representative of what he did have on hand for inventory."

White's clients knew that initiating administrative costs associated with bankruptcy proceedings would eat up some of Banagan's limited assets. And the publicity wouldn't help when the assets were sold, he said. "We decided to give him a chance to make his plan happen," White said.

A dispute with suppliers

On Jan. 11, 2005, Burton, Salomon, K2 and Red changed course and filed an involuntary bankruptcy petition against Banagan's. "We filed bankruptcy because we didn't want ourselves and other unsecured creditors to get nothing, which was the direction the matter was proceeding," White said. White's clients became convinced, he said, "that the 'Going Out of Business' sale was not going to bring in the monies predicted."

Sanborn strongly disputes White's version of events. "I will put my hand on a Bible in court and say that man is absolutely lying," Sanborn said. "He is twisting the truth."

Sanborn maintains that White and his clients "derailed" the closing sale with their court filing only because he refused to pay them in full rather than disburse the company's proceeds evenly. "If we were able to see this through, without them forcing me into involuntary bankruptcy, everyone would have been paid."

With that filing, Banagan's closing sale stopped, and the court appointed trustee Michael Askenaizer to take an accounting of the company's inventory, other assets and outstanding bills. More than 40 companies filed claims totaling more than \$1 million.

Sanborn's claims topped the list, according to court records. He said he was owed \$185,000 for a loan he made to the company. He also filed claims totaling more than \$170,000 for rent Banagan's owed his real estate companies. (For example, while Sanborn owns the building Banagan's used in Concord, he charged the company rent through his separate real estate company.)

There were other large claims too. Burton said it was owed at least \$190,000. Iron Horse Bikes was out \$10,000, according to the bankruptcy records. K-2 put a claim in for \$51,000. Pacific Cycle said it was owed \$75,000. A Sunapee bike club said it hadn't received the \$4,000 sponsorship Banagan's had pledged.

The trustee's review of the records has been thorough and taken the past few years.

Last year, Askenaizer had to reclaim nearly \$100,000 Sanborn had paid in bills just prior to the bankruptcy filing. That amount included \$25,000 Sanborn had paid to his personal American Express credit card to cover what he described as business-related expenses.

Under bankruptcy law, the company's assets are distributed in a specified order, with unsecured creditors like Banagan's equipment dealers and credit card companies at the bottom of the list. The law allows a trustee to reclaim any payments made within 90 days of a bankruptcy filing to ensure the money is distributed in the required order.

American Express fought Askenaizer's efforts to reclaim the money but eventually reached a compromise where it returned \$15,000 of it, according to court records. Part of the deal prevented the company from billing Sanborn for the amount.

In April, Askenaizer filed his final recommendations for dispersing Banagan's remaining \$31,000. The bankruptcy court will accept objections to Askenaizer's report until July 7. If none are filed, the report becomes final on July 15.

That \$31,000 won't satisfy Banagan's creditors.

Iron Horse, for example, stands to get \$547 of the \$10,000 it's owed, according to court records. Burton, which filed an adjusted claim for \$234,926, will receive \$12,600. Salomon will get \$2,000 of the nearly \$40,000 it is owed.

According to Askenaizer's recommendations, Andy and Laurie Sanborn and their rental companies won't be paid any of the \$384,000 they submitted in claims. But that loss didn't hurt the couple's ability to open their new business, The Draft, two years ago. Sanborn told the Monitor in 2006, just as he opened, that he had spent \$100,000 in televisions alone.

That's because Sanborn himself didn't declare bankruptcy. Only his business did.

The Draft has been busy since it opened, attracting crowds around Bike Week, NASCAR weekends and big sporting games. Sanborn's business neighbors have complained that his clientele are monopolizing their parking and careless about cleaning up cigarette butts and other litter.

But Sanborn said he and his wife have resolved those problems and are enjoying their return to the business scene. He talks about the bankruptcy case as a long-ago matter that seldom demands his attention now.

And if it's an issue in his campaign, it shouldn't be a negative, he said.

"We made a personal decision to change our lives," he said. "We felt we were truly doing the right thing with the closing sale. Some people disagreed with it. But I basically showed my ability to stand up to something wrong and take it on the chin."