

## **Sculpture's Owners Run Into Legal Wall**

By PAUL SUSSMAN

Modern art often sparks debate. And so it's no surprise that there has been vigorous discussion about a multi-ton sculpture, made mostly of concrete pieces, that sits in the yard of an 1840s Greek Revival home in the upscale Southport section of Fairfield.

Andrew J. Hall, a high-powered business executive who owns the \$3 million waterfront estate, describes the work as "a major sculpture by one of the world's great artists." But a passerby, quoted in the *New York Times* earlier this year, likened the long, low, wavy artwork to "a bad chunk of Interstate 95."

Aesthetics, however, are not the sole bone of contention. Because Andrew and Christie Halls' home is in the Southport Historic District, Fairfield officials have claimed the right to determine whether the sculpture is compatible with vintage buildings in the neighborhood. The town has told the Halls they need to apply for a "certificate of appropriateness" with Fairfield's Historic District Commission.

The Halls contend that, while the commission can pass judgment on buildings and permanent structures such as fences or walls, its members have no more authority over sculptures than they do over lawn statues, flower planters and patio furniture.

The sides have waged a nearly four-year-long legal battle, one that's drawing to a close. The state Supreme Court ruled last month that the sculpture, which was installed with the help of a crane, is so big and heavy that it is more like a wall than a lawn ornament. (*Historic District Commission Town of Fairfield v. Andrew J. Hall, et al.*)

Attorneys said there has been little case law dealing with historic districts and that the Supreme Court decision helped to clarify their powers.

### **Loss Of Freedom**

The immediate impact is that the Halls were required to either apply for the certificate of appropriateness or remove their sculpture. In a prepared statement issued by his appellate lawyer, Linda Morkan of Robinson & Cole's Hartford office, Andrew Hall said he will grudgingly find a new home for "Etroits sont les vaisseaux," which translates as "Narrow are the vessels."

"The principle is now established ...that an unqualified group of arbiters (the Historic District Commission) henceforth decides what you can or cannot place in your front yard," said Hall. "This marks another small but important loss of individual freedom that is characteristic of these times."

By all accounts, the Halls are knowledgeable collectors. In 2006, they made *Art News*' list of the 200 most aggressive art buyers.

"Etroits sont les vaisseaux," by German sculptor Anselm Kiefer, is a concrete, steel and lead sculpture that resembles a series of 17 waves with an open book in the middle. Five flatbed trucks carried the dismantled work into Southport in August 2003. Workers dug a narrow trench and filled it with 21 tons of gravel and stone to serve as the sculpture's base.

The Halls, who planted shrubs to shield the sculpture from the street, had filed an application for a certificate of appropriateness two months before the artwork arrived, and then withdrew it. A few months after the installation, the Fairfield Historic District Commission took legal action. Both parties then filed motions for summary judgment. A Superior Court judge sided with the town. In 2005, Judge Taggart D. Adams issued an injunction that gave the Halls 30 days to remove the sculpture or apply for the certificate. He delayed implementation to give the Halls time to appeal.

The state Supreme Court, which took the case directly from the Superior Court, focused on whether the sculpture is a piece of personal property or a structure, as defined under C.G.S. § 7-147(a). The statute does not specifically define a structure, saying only that it is something "affixed to the land" and that examples include "signs, fences and walls." The Halls' attorneys have argued that the sculpture was neither affixed to the land nor embedded in the ground.

But Judge Adams had ruled that that the sculpture's sheer size and weight made it effectively affixed to the ground. He compared it to the

classic New England stone walls that fall under the jurisdiction of historical districts. The Supreme Court, after parsing definitions of "structure" and "affixed," reached the same conclusion.

The high court, in a decision written by Justice Peter T. Zarella, dismissed the idea that something had to be held to the earth by "nails, glue, screws, tacks or clamps" in order to be considered affixed. Instead, Zarella wrote that the sculpture was "affixed to the land by the virtue of its own 'multi-ton' weight and the force of gravity."

### **'A Little Uneasy'**

Maureen Shanahan, assistant to the director of the Aldrich Museum of Contemporary Art in Ridgefield, said the Supreme Court ruling raises concerns that local governments will become more aggressive in trying to regulate art work. "It definitely makes you a little uneasy wondering what's next," said Shanahan.

The case has implications beyond the art world. Connecticut is filled with historic districts, and there are constant battles between residents who want to make changes to their homes or property and commissions that want to preserve the character of neighborhoods. Fairfield Town Attorney Richard Saxl said the Supreme Court ruling actually puts limitations on historic districts by making it clear that officials can't regulate smaller items in people's yards. "What they tried to do was draw a distinction between a flower pot and a 40-ton sculpture," said Saxl.

In court documents, the Halls state they will move the sculpture by Sept. 30. Where it's going is anybody's guess. •