

## QUESTION 4

On February 1, Wholesaler called Manufacturer and ordered 100,000 widgets at \$5 apiece for delivery on February 8. Manufacturer, who knew that Wholesaler was buying the widgets in order to resell them to retailers, said, "It's a deal." Wholesaler immediately entered into contracts to resell them for \$15 apiece.

On February 2, Wholesaler sent Manufacturer a signed formal memorandum confirming the agreement and setting forth all its terms. In listing the terms, Wholesaler misstated the price as \$6 apiece and added an additional term—that any dispute was subject to binding arbitration.

On February 3, Manufacturer received and read the memorandum.

Manufacturer was surprised by the arbitration term, which was rare in the industry. Manufacturer did not respond to the memorandum.

On February 8, Manufacturer discovered that the market price of widgets had climbed to \$25 apiece and refused to deliver them to Wholesaler. Although substitute widgets were available for \$25 apiece, Wholesaler did not have the cash or credit to buy them.

On February 28, Wholesaler sued Manufacturer for breach of contract.

1. Is Wholesaler likely to prevail in its suit? Discuss.
2. What remedies, if any, may Wholesaler reasonably seek? Discuss.